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# TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 370.

THE STATE OF LOUISIANA, EX RELATIONE THOMAS W. NELSON, PLAINTIFF IN ERROR,

*vs.*

THE POLICE JURY OF THE PARISH OF ST. MARTIN IN THE STATE OF LOUISIANA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED OCTOBER 10, 1883.

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a Transcript of record in suit No. 8,371, entitled State of La., *ex rel.* Thos. W. Nelson, *vs.* Police Jury, Parish of St. Martin. 21st jud'l dist. court. C. H. Mouton, dist. att'y, for appellant, and J. E. Mouton, Col. A. Leblanc, Judge E. Simon, att'ys for appellant; Breaux and Hall, att'ys for appellee; parish of St. Martin.

1 *Petition.*

To the Hon. Theo. Fontelieu, judge of the Third Judicial District Court, in and for the Parish of St. Martin:

The petition of the State of Louisiana, on the relation of Thos. W. Martin, a resident of the parish of St. Mary, with respect, shows:

That in the case of Thos. W. Nelson *vs.* The Parish of St. Martin, No. 6,515 of the docket of said court, he obtained a judgment against the aforesaid Parish of St. Martin, in the words and figures following, viz:

"In the above-entitled case, the law and evidence being in favor of plaintiff and against *and against* the defendant, it is ordered, adjudged, and decreed, that said plaintiff, Thos. W. Nelson, have judgment against and recover from the defendant, Parish of St. Martin, the sum of forty-five hundred dollars, with 8 per cent. interest per annum from Oct. 5th, 1868, and that the board of assessors, or officers whose duty it is to assess taxes, forthwith [proceed] to assess a parish tax, at a sufficient rate per cent., upon the assessment
2 roll of the current year, to pay said judgment, and that the tax collector proceed forthwith to collect said tax in the same manner that parish taxes are now collected, and the amount collected to be a specific fund to pay said judgment.

"Done, read, and signed in open court, this 29th November, 1873."

Relator avers that since the rendition of said judgment he has vainly endeavored to have the same executed, according to law.

That notwithstanding his repeated demands, and more particularly that dated the 21st day of November, 1878, the police jury of the parish of St. Martin, whose duty it is to levy and assess the necessary tax required to pay the amount of the aforesaid judgment, neglect and refuse to do so.

Relator avers that, as a pretext for not complying with the requirements of the aforesaid judgment and of the law, that the said police jury, and other officers whose duty it is to assess and levy and collect the tax directed to be levied and collected to pay the aforesaid judgment, say that act No. 56 of extra session of the leg-
3 islature of 1877, p. 87, repeals sections 2,628, 2,629, 2,630, 2,647, 2,648, and 2,649 of the Revised Statutes of 1870, and all that portion of Art. 625 of the Code of Practice commencing at and following the word "provided" in the sixth line of said section, which sections of the Revised Statutes and proviso of the Code of Practice

alone give a remedy to judgment creditors of a parish for the enforcement of judgments.

Now relator avers that the aforenamed sections and provisions of law were all in force prior to, at, and for long years after the final rendition of his judgment aforesaid, in Nov., 1873; that the remedy and means of enforcement of his said judgment provided therein were, by law, incorporated into and made a part of his judgment and of his rights thereunder, and that he is fully entitled to their benefit and aid in enforcing his judgment aforesaid.

That the act of Apr. 10th, 1877, repealing the aforesaid sections and provisions of the Code of Practice, if constitutional, would have your relator absolutely without remedy to enforce his judgment aforesaid, inasmuch as the parish is without property liable to
4 seizure in any amount, or in an amount sufficient to pay the judgment in favor of relator.

He avers that the aforesaid act of Apr. 10th, 1877, designed to repeal the aforementioned sections of the Revised Statutes and proviso of Art. 625 of the Code of Practice, is in direct conflict with Art. 110 of the Constitution of the State of La., and paragraph one of sec. ten, Art. first, of the Constitution of the United States, prohibiting the enactment of laws impairing the obligations of contracts, and that, as to relator and his rights under the aforesaid judgment, and remedies for enforcing the same, the said act of April 10th, 1877, is unconstitutional, null, void, and of no effect.

Relator avers that unless aided by writ of mandamus to compel the severally named officers to perform their several duties according to law, he will lose his rights as secured to him by his judgment aforesaid and by law.

Wherefore, the premises and annexed affidavit considered, relator prays that a writ of mandamus issue, directed to the police
5 jury of the parish of St. Martin and to Felix Olivier, collector of taxes for said parish of St. Martin, both to be cited and served according to law, commanding them to show cause, if any they have, at the court-house for said parish in the town of St. Martinsville, on Wednesday, the 2d day of April, 1879, at 11 o'clock a. m.—the said police jury, why it should not forthwith levy and assess a tax of —— per cent. on the property of the parish, according to the assessment-rolls thereof, for the current year, a per cent. deemed sufficient to realize the amount needed to pay the judgment in favor of relator and against the par. of St. Martin for the sum of ($4,500) forty-five hundred dollars, with 8 per cent. per annum interest from Oct. 5th, 1868, and costs of court and collection; the said collector, why he should not proceed immediately thereafter to collect the aforesaid tax so levied and assessed, in the same manner that parish taxes are now collected, the amount collected to be a specific and special fund to pay the judgment aforesaid in favor of T. W. Nelson; and to these ends, why the mandamus should not be

6 made peremptory, with all costs; and he prays for general and equitable relief.

3, 20, 1879. (Signed) BREAUX, FENNER & HALL,
FRED. GATES,
*Attorneys for Relator.*

Thos. W. Nelson sworn, says that all the facts and allegations in the foregoing petition contained, are true.

THOS. W. NELSON.

Sworn to and subscribed before me, this 24th day of March, 1879.
(Signed) P. H. MENTZ,
*Notary Public.*

R'd and filed, March 28th, 1879.
(Signed) JOS. BORDIER,
*D'y Clerk.*

*Order of Court.*

STATE OF LOUISIANA, *ex rel.* THOS. W. NELSON,
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN.

In the above-entitled cause, and upon a prayer showing, it is ordered that a copy of the petition and this order be served upon Felix Olivier, tax collector of the parish of St. Martin, as well as upon the president of the police jury of said parish, commanding them to appear at the court-house in the town of St. Martinsville, on Wednesday, the 2d day of April, 1879, then and there to show cause,
7 if any they have, why they should not assess and levy and collect a tax sufficient to pay the judgment, as set forth in words and figures in the plaintiff's petition; and for this purpose let a writ of mandamus issue, addressed to the above named and mentioned parties, ordering them to show cause on said second day of April, 1879, why they should not proceed as prayed for.

Granted at chambers, this 26th day of March, 1879.
(Signed) THEO. FONTELIEU,
*Judge 3d Jud. Dist.*

R'd and filed, March 28th, 1879.
(Signed) JOS. BORDIER,
*D'y Clerk.*

*(This order was entered on June 15th, 1881.)

*Minutes of Court.*

State of La., Parish of St. Martin.

WEDNESDAY, *June 15th*, 1881.

Hon. Judge Theo. Fontelieu being present, mandamus called at chambers, and reassigned for Tuesday, 21st inst., at 10 o'clock a. m. The dist. att'y being present on the day of the reassignment, but the reassignment was made without his consent or participation.

8371. STATE OF LA., *ex rel.* THOS. W. NELSON
*vs.*
POLICE JURY OF THE PAR. OF ST. MARTIN.

*Writ of Mandamus.*

Third Jud'c'l Dist. Ct. No. 8371. Par. of St. Martin.

STATE OF LA. *ex rel.* THOMAS W. NELSON
*vs.*
POLICE JURY OF THE PAR. ST. MARTIN & *als.*

8 To the president of the Police Jury of the parish of St. Martin, and to Felix Olivier, tax collector of said parish of St. Martin.

In the name of the State of La., you are hereby ordered and commanded to comply with the order granted by the honorable 3d jud'l dist. court, dated March 26th, 1879, a copy of which is hereto annexed, as also copy of a petition in said above-numbered case, or show cause to the contrary, before the honorable judge of said 3d jud'l dist. court, at the court house of the par. of St. Martin, in St. Martinsville, on Wednesday, the 2d day of April, A. D. 1879, at 11 o'clock a. m.

Witness the honorable Theo. Fontelieu, judge of said court.

Given under my hand and the seal of court, at St. Martinsville, parish of St. Martin, this 28th day of April, A. D. 1879.

(Signed) [SEAL] JOS. BORDIER, *D'y. Clerk.*

*Sheriff's Return.*

Received the writ of mandamus on the reverse hereof on the 29th day of March, 1879, and on the same day, month, and year,
8½ duly served a true copy of same on P. D. Olivier, tax collector, personally, at his residence in the town of St. Martinsville, on the 31st day of same month and year, duly served
9 a true copy of same on A. Dugny, pres. of the Police Jury, personally, residence about 75 miles from the court house of this parish.

(Signed) CHAS. GUERINIERE, JR., *Sh'ff.*

R'd and filed April 2d, 1879.

(Signed) JOS. BORDIER, *D'y Clk.*

*Answer.*

Dist. Court. No. 8371. St. Martin Parish.

STATE *ex rel.* W. NELSON
*vs.*
PAR. OF ST. MARTIN.

Armand Dugny, herein appearing in his capacity of president of the Police Jury of the St. Martin parish, in obedience to an order issued in above-entitled cause, now comes into court, and for cause why relator's demand should not be granted, through undersigned counsel, with respect shows:

That even supposing that the Policy Jury of this parish could be commanded to levy a tax for the purposes set forth in relator's petition, still no valid judgment could be rendered ordering the collection thereof, as prayed for, the present tax collector of the State and parish, taxes not being made a party to this suit.

10 That even if he had so been made party hereto, still relator is not entitled to the relief sought for, for this, that the only law under and by virtue of which he pretends to proceed has been legally repealed by act No. 56 of the laws of 1877. Had said law being essentially a remedial law, its repeal did in no wise impair relator's rights, but merely suspended or abolished one of the means by which his said vested rights could be exercised or executed, and is therefore valid and constitutional.

Wherefore he prays that the mandamus prayed for be denied and refused at relator's costs, and for general relief.

(Signed) ROB'T MARTIN, *D. Apr. Trm.*
J. E. MOUTON, *of Counsel.*

Rec'd & filed April 5th, 1879.
(Signed) JOS. BORDIER, *D'y Clerk.*

*Amended Petition.*

Jud. Dist. C't., Par. St. Martin.

THE STATE OF LA., *ex rel.* THOS. W. NELSON,
*vs.*
POLICE JURY OF ST. MARTIN PARISH, *et als.* } No. 8371.

11 To the hon. the judge of the 21st judicial district court, in and for the parish of St. Martin.

The supplemental petition of the State on the relation of Thos. W. Nelson with respect shows:

That by law the sheriff of the parish is now tax collector, and that Ulger A. Guilbeau is sheriff and tax collector for said parish, & should be made a party defendant herein.

Wherefore reiterating all the allegations of former petitions for a mandamus, petitioner prays for leave to file this amended petition; that said Ulger A. Guilbeau, sheriff and tax collector for the parish

of St. Martin, be served with a copy of the original petition, and with a copy of this, & be *cite* to answer; and after due proceedings had, that he be ordered to collect the tax assessed herein; & pay the same over according to law. And petitioner prays for costs and general relief.

(Signed) BREAUX & HALL,
*Attorneys.*

12 *Order.*

Let this supplemental petition be filed, and the mandamus case fixed for the 15th inst.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud'c'l Dist. C't, Parish of St. Martin.*

R'd & filed June 15th, 1881.

(Signed) WM. B. EASTIN, *D'y Clerk.*

* (See page 7.)

*Plaintiff's Exception.*

21st Jud'l Dist. Court.

THE STATE, *ex rel.*, NELSON
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN. } 8371.

Be it remembered that on the trial of this cause, the defendant offered the evidence of J. A. Domengeaux & the records of the police jury, to which evidence & to all evidence tending to any point other than that, whether the original action was founded on a contract *vel. non*, under the terms of the decision of the supreme court remanding this case, which objection was overruled by his honor the judge, and the testimony admitted in rebuttal of the aver-

13 ment, but the suit was founded on a contract.

To which ruling pl'ff excepts, & reserves this his bill of exception for signature in open court, and prior to signing judgment.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud. Dist.*

R'd & filed June 21st, 1881.

(Signed) W. B. EASTIN, *D'y Clerk.*

*Defendant's Exception.*

Dist. Court, Parish of St. Martin.

THOS. W. NELSON
*vs.*
PAR OF ST. MARTIN. } No. 6515.

*Mandamus.*

Be it remembered that on this 21st day of June, 1881, in chambers, St. Martinsville, when the above entitled and numbered

case was called for trial, appeared Chas. H. Mouton, dist. attorney of the 21st jud'c'l dist. of the State, who acting as such under the provisions of Section 4th, of act No. 96, of 1880, objected to file an appearance herein for the defendant, and to go into the trial of said case at the present time, for the following reasons, viz:

1st. Because Armand Dugny, president of the police jury
14 of the parish of St. Martin, has not been notified as required by law of the order fixing the trial of this case for the 15th of June, 1881.

2d. Because on the said 15th of June, when the trial of this case was refixed for this, the 21st inst., the said Armand Dugny, president aforesaid, was not present, and said case was reassigned for the 21st June, 1881, without the knowledge or consent of said Dugny.

3d. Because this case having been remanded by judgment of the supreme court for further proceedings and the introduction of further evidence therein, the same was thereby indefinitely postponed, the same cannot be tried in chambers out of regular court term on an *ex parte* motion or application of the plaintiff's attorney without due notice to the defendant of the day and place of the trial. But his honor, the judge, trying this case being of opinion that said objection herein made was not well founded, and that it was
15 not necessary that the said defendant, as president aforesaid, should have been notified, as herein contended, by the district attorney, for the following reasons, to wit: The party defendant having been once cited he was not entitled a new notice of the order fixing the trial of this mandamus in chambers for the 15th June, 1881; and for the further reason that the district attorney, the legal representative of the police jury, being present in court, and having been notified of the day fixed for the trial of this case, overruled said objections and ordered the parties to proceed to the trial of the said case; whereupon to this opinion and ruling of his honor, the judge trying this case, C. H. Mouton, in his capacity of dist. att'y aforesaid, excepted, reserved the point, and tender this, his bill of exception, which was submitted to the pl'ff' att'y, and then was read and signed in chambers before judgment at
16 St. Martinsville this 21st June, 1881.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud'c'l Dist.*

R'd and filed June 21st, 1881.
(Signed) WM. B. EASTIN, *D'y Clerk.*

*Defendant's Exception.*

THOS. W. NELSON
*vs.*
PARISH OF ST. MARTIN. } No. 6515.

Be it known that in the course of the trial of the above-entitled cause, plaintiff having offered in evidence a copy of resolution of police jury of the par. of St. Martin signed by one Baker, and reso-

lutions of the board of trustees of New Iberia, defendant objected to the admissibility of said documents on the grounds that there was no authority vested in the persons who had given copies of said resolutions to give authentic copies thereof admissible in evidence, but that the original should have been offered in evidence, and in the further grounds that if said copies were admissible in evidence, the existence of said resolutions should have been just established; which objections having been overruled by his honor,
17 the judge of the 21st dist. court, on the ground that it was too late for the defendants to object thereto, defendant excepted to the ruling of the judge, and having reserved his bill of exception to said ruling, and presented it to the adverse counsel, offers it to the said judge for his approval before judgment signed.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud'l Dist.*

R'd and filed June 21st, 1881.
(Signed) WM. B. EASTIN, *D'y Clerk.*

*Answer.*

THOS. W. NELSON *vs.* PARISH OF ST. MARTIN. } Dist. Court. No. 8371. Mandamus. Par. of St. Martin.

Now comes into court Chas. H. Mouton, dist. att'y of the 21st jud'l dist. of the State of La., in and for the par. of St. Martin, who having been ruled by the court to go into the trial of the above-entitled and numbered case, and considering it his duty, under sec. 4th of act No. 96 of 1880, to represent the police jury in this
18 case, amending and supplementing, with leave of the court first had and obtained, the original answer of the defendant further specially denies—

1st. That Thomas W. Nelson, the pl'ff herein, is the owner of and has any interest in the judgment that he now seeks to enforce against the parish of St. Martin by the levy of a tax.

2d. That any contract has ever been entered into between the said Thos. W. Nelson and the parish of St. Martin.

3d. That the judgment rendered in the above entitled and numbered suit was founded on any contract entered into between the parish of St. Martin and the said Thos. W. Nelson, or between the said Nelson or any one having authority to bind the parish of St. Martin.

4th. That the bridge, the price of which the pl'ff claims of the parish of St. Martin, and for the payment of which he prays for the levy of a special tax, was contracted for, constructed, or built
19 previous to the division of the parish of St. Martin and the formation of the parish of Iberia; and,

5th. It is specially denied that there has ever been any resolution or ordinance passed by the police jury of the par. of St. Martin, on the 16th day of July, 1868, authorizing the president of said police

jury to contract for the construction of a bridge on the Bayou Teche within the limits of the town of New Iberia, as alleged in plaintiff's petition.

And for further answer, the undersigned herein, representing the police jury of the parish of St. Martin, avers—

1st. That if any such contract as herein referred to has be*tween* entered into, which is specially denied, it was entered into at a time when the parish of St. Martin embraced within its limits the largest and richest portion of what is now the parish of Iberia, and that, if liable at all under the said pretended contract, the parish of
20 St. Martin, such as it now is, can be legally held only for a just proportion of the amount claimed herein, corresponding with the extent of its present territory, number of inhabitants, and the valuation of taxable property, and left within its limits, as fixed after the formation of the parish of Iberia.

2d. That the bridge, the price of which is herein claimed by T. W. Nelson, was, after the division of the parish of St. Martin and the formation of the parish of Iberia, the most of whose territory and inhabitants were taken from the parish of St. Martin, retained by and became the absolute property of the parish of Iberia, which is alone liable for the price of said bridge, if it were contracted for and built as alleged, but which is specially denied.

3d. That if the parish of Iberia be not alone liable under said pretended contract, the judgment which is sought to be satis-
21 fied by the levying of a special tax on the taxable property within the present limits of the parish of St. Martin was and could not have been legally obtained, except against the parish of St. Martin, such as it was at the date of said pretended contract, otherwise the whole burden of a common debt would be borne by only a reduced number of those alleged to have been the contracting parties, and jointly bound for the payment thereof.

4th. That the parish of St. Martin is, at the present, largely involved in debts, and that the present parish tax is of ten mills on the dollar, and the levying of an additional parish tax, to pay in one instalment the whole of the Nelson's judgment, would not only exceed the rate of taxation as fixed by article 209 of the constitution of the State, but would absorb, or nearly absorb, the entire revenues of its inhabitants.

22 It is therefore prayed that the writ of mandamus herein prayed for be refused, and that the pl'ff's demand be rejected with costs and for general relief; and as in duty bound, &c.

(Signed) C. H. MOUTON,
*Dist. Att'y 21st Ju'al Dist. of La.*

R'd and filed June 21st, 1881.
(Signed) JOS. BORDIER, *D'y Clerk.*

*Statement of Facts.*

STATE OF LOUISIANA *ex rel.* THOS. W. WILSON, *vs.* POLICE JURY, PARISH OF ST. MARTIN. } No. 8371. Dist. Ct. Parish of St. Martin.

Plaintiff's Evidence on Motion of the Continuance.

*C. H. Moulton, Testimony.*

C. H. Moulton duly says:

On Saturday, the 11th of June, I entered the office of Mr. J. E. Mouton, and there met Col. Breaux, the plaintiff's attorney, who told me that an order had been issued by his honor, the judge of the district, fixing the trial of the mandamus prayed for the 15th of this month; he then asked me if I would accept service of notice,
23 and service for the supplemental petition for the sheriff; I told him, no; he then asked me if I required him to have a written notice served on me from the clerk; I told him that that was not necessary, that I would not dispute the verbal notice then given to me, but I added that I did not think that I could prepare the case for so early a day, and that I would avail myself of all legal means to postpone the trial as long as I could; on the 15th, Col. Breaux told me that, if it was a matter of convenience to me, he would postpone the trial of the case for some other day to suit my convenience; provided it could be tried in time to have the case decided at the next session of the supreme court at Opelousas.

I told Col. Breaux that I would have nothing to do with the re-assignment of the case, and would not participate in it at
24 that time, as my object was not to try the case before I was compelled.

At the time Mr. Breaux asked me to accept service of notice, he stated to me that his reason for doing so was that he had an understanding to that effect with Mr. Jas. E. P. Mouton, one of the former attorneys of record in this case; I then told Mr. Breaux that I had been appointed dist. att'y but very lately, (23d of May, 1881,) and that I knew nothing of this case, and had not been counsel in the case, and I did not feel authorized to accept service of the notice.

Mr. James E. Mouton declares and says: I have been engaged as counsel with other members of this bar, by the Police Jury, in the case of Nelson *vs.* The Parish of St. Martin.

The mandamus case was managed on its first trial before the district court by myself.

25 Postal card offered in evidence written by J. E. Mouton, marked A. In reference to this card, I will state that proposition was submitted by my partner, Mr. Martin, to the Police Jury, at their last session, on the first Monday of June, 1881, that all propositions were not acted upon, and that upon this M. M. Breaux and Hall were informed that the Police Jury had refused to compromise in any manner. At the time of this transaction I consid-

ered that I was acting under the employment as one of counsel of the Police Jury, and gave the information to adverse counsel through courtesy.

I do not consider that my employment as associate counsel in this case has ceased, although I do not claim to now control the case since the appointment of Mr. C. H. Mouton as dist.
26 att'y, although my fee has been paid for services rendered, yet I have not been notified that my engagement was revoked.

*C. H. Mouton's Testimony.*

Mr. C. H. MOUTON, recalled, says:

That since the 11th of June, 1881, he has not seen or communicated with Armand Dugny, president of the Police Jury; that he has never rec'v'd any application, either verbally or in writing, from the Police Jury to represent the parish in this suit.

I have not made any effort to communicate with the president of the Police Jury, who lives on Bayou Chene, in this parish, where it is impossible to go, except a large portion of the way in skiff, about 40 miles from this place. I was not aware there was a post office at Bayou Chene, and it is only since the 15th inst., that upon inquiring how I could communicate with Armand Dugny, that I was told that by writing to him, addressed at Charenton parish,
27 of St. Mary, he would get the letter.

Plaintiff offers in evidence extract of the minutes of the Police Jury, session 6th of June, page 361, under heading 3d paragraph, commencing, "Attorneys, Mouton & Martin," marked M.

*Judge E. Simon's Testimony.*

Judge EDWARD SIMON says:

My fees for attending to the case of Nelson *vs.* Police Jury, No. 8371, on appeal before the supreme court at Opelousas, in 1880, have been paid in full by the Police Jury, through its treasurer. These fees were paid about two months ago.

*Judge A. DeBlanc's Testimony.*

Judge A. DEBLANC says:

I was employed to represent the parish of St. Martin, before the supreme court, at its last term, and was paid in full for my services, two or three months since.

*The Court's Statement.*

It is to the knowledge of the court that there is a post office at Bayou Chene, where the president of the Police Jury re-
28 sides, and a mail going there twice or three times a week, I am not sure.

Evidence closed June 21st, 1881.

(Signed) JOS. BORDIER, *D'p'y Clerk.*

*Statement of Facts.*

STATE OF LA., *ex rel.* THOS. W. NELSON, *vs.* POLICE JURY ST. MARTIN P'SH. } 21st Jud'l Dist. Ct. No. 8371. Mandamus P'sh of St. Martin.

On the Merits. Plaintiff's Evidence.

1st. Of the record in case Thos. W. Nelson *vs.* Parish of St. Martin, No. 6515; the petition, the answer, the bonds marked A and B, sued on in the original suit of Nelson against the Parish of St. Martin, No. 6515, excepted to by the district attorney to that part that said "As per resolution adopted by the said Police Jury at its sitting of the 16th of July, 1868, on the ground that there is no resolution of that body of said date authorizing the president to contract or to issue said bonds.

29 2d. Document marked D, dated St. Martinsville, Nov. 12th, 1873, of Record 6515. Objected to, and bill reserved.

3d. Copy of resolutions adopted by the board of trustees of the town of New Iberia, Sep. 14th, 1868, marked E. Objected to, and bill reserved.

4th. A certified copy of a notarial act, passed before S. Magner, notary public, dated New Orleans, Oct. 5th, 1868, between Alfred Duperier, president Police Jury of St. Martin's Parish, and Elié, pres. board of trustees town of New Iberia, marked G.

5th. Judgment, marked F.

*Edg'd Richard's Testimony.*

EDGARD RICHARD, duly sworn, says that, to his knowledge, the assessment rolls for the current year are not yet closed. Witness is the parish treasurer. The parish has not in the treasury a fund subject to execution to pay a judgment of $9,000 or $10,000.

30 He has no fund in hand with which to pay the judgment in the case of Nelson *vs.* the Parish of St. Martin.

*Testimony of Sheriff.*

Ulger A. Guilbeau, sheriff, duly sworn, says I have not received the tax roll for the current year for the collection of tax 1881.

*Defendant's Evidence.—J. A. Domengeaux's Testimony.*

J. A. Domengeaux sworn, says: I am clerk of the Police Jury of this parish; he is keeper of the books of record, in which all the resolutions and ordinances of the Police Jury are inscribed; he got the book from his predecessor.

The document marked D, purporting to be copy of resolutions of Police Jury of the 16th of July, 1868, is copy of resolutions inscribed in the book of record of the Police Jury of the 16th of July, 1868; but the said resolution as inscribed in the record of the Police Jury

is not signed by the president or secretary of said body, on the record of the Police Jury; resolutions passed by that body on the 8th of June, 1868, and immediately preceding the resolution of
31 the 16th July, 1868, are signed by the president and clerk of Police Jury.

Cross-examined, says, that there are many minutes of the proceedings of the Police Jury prior to that date that are not signed by the president, but are signed by the clerk.

In chief: Statement showing aggregate amount of the outstanding warrants or liability issued in 1880 against the parish, and approved by the Police Jury.

J. A. Domengeaux recalled, says: I cannot state how much of said warrants have been paid at this date.

Extract from Book of Record of the Police Jury of July 16th, 1868, marked (1.)

To all of which testimony the plaintiff objects. The objection overruled and admitted for the purpose of showing the non-existence of a contract. Bill reserved.

Judgments of the supreme court and of the district court in case entitled Board of School Directors *vs.* O. Delahoussaye, No. 8020.

32 Extract from the Record Book of the Police Jury at its session of the 2d of May, 1881, marked No. 2.

*Col. Breaux's Testimony.*

Col. Breaux sworn, says: I have seen Mr. T. W. Nelson about 60 days ago, as far as I can remember, about 60 days ago; he spoke to me about his ownership of the judgment; he said at that time that he would like to sell it if he could.

Act No. 208 of 1868, entitled, An act to form a new parish to be called the parish of Iberia, map of Latcuret, the original to be used to show the extent of territory of the parish of St. Martin, before and after the formation of the parish of Iberia.

Evidence closed June 4th, 1881.

(Signed) WM. B. EASTIN, *D'y Clerk.*

*Judgment.*

| | | |
|---|---|---|
| THE STATE *ex rel.* NELSON | } | 8371. |
| *vs.* | | 21st Jud'l |
| THE POLICE JURY OF THE PARISH OF ST. MARTIN. | } | Dist. C't. |

The mandamus in his case came on to be heard accord-
33 ing to assignment, against the Police Jury of the Parish of St. Martin.

Present: G. A. Breaux; att'y for plaintiff; C. H. Mouton, district att'y, for the defendant.

When, after hearing the evidence and argument of counsel, and the law, and the evidence being in favor of pl'ff:

It is ordered, adjudged and decreed, that the mandamus against

the Police Jury of the parish of St. Martin be made peremptory; that the said Police Jury, at its next session, do levy a tax of ten mills on the dollar on the assessment roll for the current year, 1881, upon the property of the parish of St. Martin, to be collected in due course of law, the same to be a special fund to pay the judgment in the case of Thos. W. Nelson *vs.* The Parish of St. Martin in suit No. 6515 of the docket of the 3d jud'l district court in and for the parish of St. Martin, and that the plea of *res adjudicata* be sustained.

34 Thus done and signed at chambers at St. Martinsville, this 21st day of June, 1881.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud'l Dist.*

R'd and filed June 21st, 1881.

(Signed) WM. B. EASTIN, *D'y Clerk.*

*Petition for an Appeal.*

To the Honorable Theodore Fontelieu, judge of the 21st jud'c'l district of the State of Louisiana, in and for the Parish of St. Martin:

The petition of Armand Dugny, president of the police jury, p'sh of St. Martin, respectfully represents:

That a final judgment in the suit No. 8371 of the docket of said court, entitled Thos. W. Nelson *vs.* Police Jury of the Parish of St. Martin *et als.*, making the writ of mandamus therein prayed for peremptory, and condemning petitioner and police jury of said parish to levy a tax of ten mills on the dollar on the taxable property of said parish, to be applied to the payment of the judgment
35 rendered in the suit No. 6515, entitled Thos. W. Nelson *vs.* The Parish of St. Martin, amounting to four thousand five hundred dollars, besides interest.

Petitioner further showeth that he has been aggrieved by said judgment as there is error in the same, and is entitled to an appeal to the supreme court at Opelousas, at its next regular term.

Wherefore he prays that you grant him a suspensive and devolutive appeal in the alternative from said judgment, returnable at the next regular term of the supreme court of the State of La., at Opelousas, on furnishing bond, as directed by law and the court.

He prays also for general relief, as in duty bound.

(Signed) E. H. MOUTON,
*Dist. Att'y 21st Jud'l Dist. La.,*
*representing Police Jury and Petitioner.*

*Order.*

STATE OF LOUISIANA, *Parish of St. Martin:*

36 The foregoing petition being considered, it is therefore ordered that a suspensive appeal be and hereby granted

to defendant and petitioner on his furnishing bond in the sum fixed by law. It is also ordered, that a devolutive appeal be and is hereby also granted to said petitioner from the judgment referred to in the above petition, on furnishing bond in the sum of one hundred dollars, said suspensive and devolutive appeal from said judgment returnable to the supreme court of the State of Louisiana at the next regular term of the same at Opelousas.

Given at Chambers, at St. Martinsville, this 21st day of June, A. D. 1881.

(Signed) THEO. FONTELIEU,
*Judge 21st Jud'l Dist.*

Service accepted and citation waived; also delays for answering same waived.

(Signed) GUS. A. BREAUX,
37 *Att'y for Plaintiff.*

R'd and filed June 21st, 1881.

(Signed) WM. B. EASTIN, *D'y Clerk.*

*Bond of Appeal.*

STATE OF LA., *ex rel.* THOS. W. NELSON } 21st Dist. Court
*vs.* } No. 8371,
POLICE JURY, PARISH OF ST. MARTIN. } P'sh of St. Martin.

Know all men by these presents, that we, Armand Dugny, as president of the police jury of the parish of St. Martin, as principal, and Auguste Maraist, also of said parish of St. Martin, as security, are held and firmly bound unto H. P. Fournet, clerk of the 21st jud'l dist. court, in and for the parish of St. Martin, in the full sum of one hundred dollars, lawful money of the United States of America, for the payment of which well and truly to be made we bind ourselves, and each of us by himself, our heirs, executors, and administrators, firmly *in solido* by these presents. Dated at
38 ——, in the parish aforesaid, this 28th day of June, A. D. 1881.

R'd and filed June 28th, 1881.

(Signed) JOS. BORDIER,
*D'y Clerk.*

Now the condition of the above obligation is such that whereas a certain definitive judgment has been rendered by the judge of said court in chambers, in favor of the State of Louisiana *ex rel.* Thos. W. Nelson, against the above-bounden Police Jury of said parish, making absolute the mandamus sued out in said suit with costs, from which judgment the said Police Jury, through their said president, have prayed for a devolutive appeal and which was granted returnable at the next term of the supreme court to be held at Opelousas for the western district of Louisiana; if, therefore, the said Police Jury shall prosecute their appeal with effect, or pay all such sums as may be awarded against them on said appeal, then

this obligation to be void and of no effect, otherwise to be and remain in full force.

(Signed) ARMAND DUGNY,
39 *President of the Police Jury, of the Parish of St. Martin.*
AUG. MARAIST.

Approved June 29th, 1881.
(Signed) H. P. FOURNET, *Clerk.*

(See Postal Card, marked A, p. 42.)—File No. 6515.

*Petition.*

To the Honorable the Judge of Third Jud'c'l Dist. Court, Parish of St. Martin:

The petition of Thos. W. Nelson, residing in Brashear, Parish of St. Mary, respectfully represents that the Parish of St. Martin is indebted to him in the sum of four thousand five hundred dollars, besides interest, for this, to wit: that he is the holder and owner of two promissory notes, one for thirty-five hundred dollars ($3,500) and the other for one thousand dollars, both dated New Orleans the 5th Oct., 1868, wherein the Police Jury, of the Parish of St. Martin, promises to pay to the order of the president of the board of trustees of the town of New Iberia (then) in the Parish of St. Martin, in this State, the sum of three thousand five hundred
40 dollars, and of one thousand dollars, respectively, value received, as per resolution adopted by the said Police Jury at its sitting of the 16th July, 1868, which notes were signed Alfred Duperier, Pres. Police Jury, Parish St. Martin, and endorsed, pay to the order of Thos. W. Nelson (your petitioner) without recourse, Signed, Achille Bessan, president, and which prommissory notes or bonds were duly accepted by O. Delahoussaye, treasurer, all of which will appear by said two promissory notes or bonds hereto annexed and made part of this petition. That said bonds or promissory notes are identified with a contract by public act before S. Maguer, a notary public of the Parish of Orleans, of the date 5th Oct., 1868, between the president of the Police Jury of the Parish of St. Martin, acting for said parish and the president of the
41 town of New Iberia, and in which act provision for the payment of said notes or bonds were designated, as made by the said parish, a copy of which act is hereto annexed and made part of this petition. That interest is due on said sum from the 5th of Oct., 1868, until paid. Petitioner alleges amicable demand, and neglect, and refusal to pay. Wherefore the premises considered, petitioner prays that the Parish of St. Martin be cited to answer this petition through the president of the Police Jury thereof, that after all due proceedings, he have judgment against the Parish of St. Martin for four thousand five hundred dollars, with interest, from

the 5th Oct., 1868, with three dollars costs of copy of act, and he further prays for costs and all general and equitable relief.

(Signed) FELLOWS & MILLS, *Att'ys.*

Filed June 27th, 1870.

(Signed) L. P. BRYANT, *D'y Clerk.*

42 *Postal Card Marked A.—Plaintiff's Evidence.*

Messrs. BREAUX and HALL, *Attorneys-at-law, No. 5 Carondelet, N. O.*

D'R S. As agreed, have conferred with Police Jury in relation to Nelson case, but as yet am not authorized to submit any proposition. I have no doubt that the matter can be amicably settled, and I shall lose no time in communicating what they shall propose.

In case of any delay at this, we will, as much as possible, facilitate you by waiver of service, &c., in bringing up the case for our next term supreme court.

Yours truly,

(Signed) J. E. MOUTON.

May 31, '81.

R'd and filed June 21st, 1881.

(Signed) JOS. BORDIER, *D'y Clerk.*

43 *Answer.*

THOS. W. NELSON
*vs.*
PARISH OF ST. MARTIN. } Dist. Court. No. 6515.

Defendant, through counsel undersigned, denies all and singular the allegations contained in plaintiff's petition. Defendant further prays for general relief in the premises, and as in duty bound.

(Signed) J. E. FOURNET,
*Dist. Att'y pro tem.*
J. E. MOUTON.

Filed November 12th, 1873.

(Signed) ALCIDE VEAZEY, *Clerk.*

*Note Marked A.*

$1,000. NEW ORLEANS, LA., *5th Oct.*, 1868.

The Police Jury of the Parish of St. Martin promises to pay to the order of the president of the board of trustees of the town of New Iberia, in the parish of St. Martin, in this State, the sum of one thousand dollars, value received, as per resolution adopted by the said Police Jury at its sitting of the 16th July, 1868.

(Signed) A. DUPERIER,
*Pres. of Police Jury, P's'h of St. Martin.*

*Ne variatur.* In conformity with an act passed before me, this day, New Orleans, 5th October, 1868.

(Signed) S. MAGNER, *Not. Pub.*

Accepted.

(Signed) C. DELAHOUSAYE, JR., *Treasurer.*

44 On the reverse:

Pay to the order of Thos W. Nelson, without recourse.
(Signed) ACHILLE BESSAN, *President.*
(Signed) THOS. W. NELSON.

Filed June 27th, 1870.
(Signed) L. P. BRIANT, *Dep'y.*

Filed Nov. 12th, 1873. Marked A.
(Signed) ALCIDE VEAZEY, *Clerk.*

44½ *Note Marked B.*

$3,500. NEW ORLEANS, LA., *5th Oct.*, 1868.

The Police Jury of the Parish of St. Martin promise to pay to the order of the president of the board of trustees of the town of New Iberia, in the parish of St. Martin, in this State, the sum of five thousand five hundred dollars, value received, as per resolution adopted by the said Police Jury, at its sitting, of the 16th of July, 1868.

(S'g'd) A. DUPERIER,
*Pres. Police Jury, Parish St. Martin.*

(On the reverse:)
Pay to the order of Thos. W. Nelson.
Filed June 27th, 1870.
(Signed) L. P. BRIANT, *D'y Clerk*

Marked B. Filed Nov. 12th, 1873.
(Signed) ALCIDE VEAZEY, *Clerk.*

*Resolution Police Jury, July 16th, 1868, Marked D.*

ST. MARTINSVILLE, *Nov. 11th*, 1873.

I hereby certify that the following is a true and correct copy of resolutions passed by the Police Jury of the parish of St. Martin, at their session, holden on the 16th of July, 1868, to wit:

Resolved, That the president of the Police Jury be, and is hereby, authorized to draw on the parish treasurer a warrant in favor of the president and trustees of the corporations of the towns of St. Martinsville, New Iberia, and Breaux Bridge, each for the sum of one thousand dollars, payable out of the special appropria-
45 tion, on the tax of 1866, to build bridges on the Bayou Teche, within the limits of each of said corporations.

Resolved further, That the president of the Police Jury be, and is hereby authorized, to draw on the parish treasurer a warrant in favor of the president and trustees of the corporations of the towns of St. Martinsville, New Iberia, and Breaux Bridge, each, for the sum of three thousand five hundred dollars, payable out of any surplus funds in his hands—the proceeds of the taxes of 1865, 1866, 1867, and 1868, for the building of bridges over Bayou Teche, within the limits of each of said corporations.

Resolved, That the president of the Police Jury be, and he is hereby, authorized to enter into the above contract with any one of the above-named corporations, who will accede to said proposals.

"Signed" GUSTAVE BAKER,
*Clerk of Police Jury, pro tem.*

Marked D. Filed Nov. 12th, 1873.

46 "Signed" ALCIDE VEAZEY, *Clerk.*

Copy of resolutions adopted by the Board of Trustees of the town of New Iberia.

*Resolutions Board of Trustees, New Iberia. Marked E.*

NEW IBERIA, *Sep.* 14*th*, 1868.

On motion, *it was resolved*, That the president of the board, be, and is hereby authorized, to accept the bonds of the Police Jury of the parish of St. Martin, for the $4,500 offered by the Police Jury at its meeting on the 17th day of July last, and that he be further authorized to contract with Mr. Thos. W. Nelson on the basis of his proposition heretofore made to Dr. A. Duperier.

NEW IBERIA, *June* 14*th*, 1869.

Resolved, That the president of this board be, and is hereby authorized, to endorse over to Mr. Nelson, without recourse, the bonds of the parish of St. Martin, issued to this board for the purpose of building the bridge referred to in the foregoing resolution.

47 NEW IBERIA, *June* 14*th*, 1869.

The board next proceeded to organize permanently by electing a president, and on coming to ballots it was found that Mr. Achille Bessan obtained five votes and Mr. Jacob Harry two votes, whereupon Mr. Bessan was declared elected and took the chair.

We hereby certify that the above is the exact copy of the records of the town of New Iberia.

New Iberia, Nov. 11th, 1873.

(Signed) J. GAEL, *Mayor.*
J. BLANCHET, *Sec'ty.*

Marked E, filed Nov. 12th, 1873.

(Signed) ALCIDE VEAZEY, *Clerk.*

*Contract between A. Duperier and Elié, Marked G.*

STATE OF LA., *City of New Orleans.*

Be it known that on this 5th day of October, eighteen hundred and sixty-eight, before me, Seline Magner, a notary public, duly commissioned and sworn, in and for the parish of Orleans,
48 and the city of New Orleans, personally came and appeared Alfred Duperier, Esquire, a resident of the town of New Iberia, in the parish of St. Martin, in this State, herein acting in

his capacity of president of the Police Jury of the Parish of St. Martin, parties of the first part, and Emanuel T. Elié, Esq., a resident of the said town of New Iberia, parish and State aforesaid, herein acting in his capacity of president of the Board of Trustees of the town of New Iberia, parish aforesaid, parties of the second part.

And the said Duperier declares that, whereas, the said Police Jury of the Parish of St. Martin, parties of the first part, have, by a resolution adopted at their sitting of the 16th of July, 1868, authorized the construction of a bridge across the Bayou Teche, within the limits of the town of New Iberia, and have appropriated for
49 that purpose the sum of four thousand five hundred dollars, payable as herein set forth; and, whereas, the said parties of the second part have, by a resolution adopted at their sitting of the 14th of September, 1868, agreed to undertake the construction of the said bridge, and authorized their aforesaid president to enter into a contract for the purpose of carrying the same into effect.

Now, therefore, he, the said Elié does hereby bind and obligate the said parties of the second part to construct the aforesaid bridge in the shortest possible delay; and, furthermore, not to call upon the said parties of the first part for any repairs thereto of whatsoever nature or kind, the latter hereby relinquishing all right which they might have in their aforesaid quality on the said bridge, and transferring the same to the said parties of the second part. And
50 the said president, Alfred Duperier, in consideration of the foregoing, and in order to carry into effect the objects of the aforesaid resolution adopted by the said Police Jury of the Parish of St. Martin, on the 16th of July, 1868, does, by these present for and in the name of said Police Jury of the P'sh of St. Martin, subscribe, under date hereof, two several bonds drawn by him in his aforesaid quality to the order of the president of the board of trustees of the town of New Iberia, one for the sum of one thousand dollars, and one for the sum of three thousand five hundred dollars, the first of which bond, say, the one for one thousand dollars, is to be paid out of the funds accruing from a special appropriation made by the said parties of the first part, having for its object the construction of said bridge; and the second of which bonds say:
Three thousand five hundred dollars is to be *to be* paid out
51 of the general fund derived from the payment of the parish taxes for the year 1865, 1866, 1867, and 1868, in conformity to the aforesaid resolution of the Police Jury of the Parish of St. Martin, adopted at their sitting of the 16th of July, 1868. The said Duperier, in his aforesaid capacity, hereby authorizing the treasurer of the Police Jury of the Parish of St. Martin to pay the said two bonds out of the first funds that may come into his hands from the aforesaid sources, which bonds have been paraphed "*no variatur*" by me, notary, for identification herewith.

Thus done and passed in my office, at New Orleans, aforesaid, on the day, month, and year first before written, in the presence of James Fahey and Martin S. Ainsworth, competent witnesses, who

sign these presents with the said appearers, and me, notary, after reading thereof.

Original. (Signed) A. DUPERIER,
52 *President Police Jury, P's'h St. Martin.*

E. J. ETIE,
*President B'd of Trustees of the Town of New Iberia.*

JAS. FAHEY,
M. S. AINSWORTH,
S. MAGNER,
*Not. Pub.*

A true copy. New Orleans, 6th April, 1870.
[SEAL.] (Signed) S. MAGNER,
*Not. Pub.*

Filed June 27th, 1870.
(Signed) L. P. BRIANT,
*D'y Clerk.*

Filed Nov'r 12th, 1873.
(Signed) ALCIDE VEAZEY, *Clerk.*

*Judgment No.* 6515. *Marked F.*

THOS. W. NELSON
*vs.*
P'H OF ST. MARTIN. } No. 6515. Dist. Ct., 2d Dist. St. Martin.

In the above-entitled case, the law and evidence being in favor of plaintiff and against the defendant, it is ordered, adjudged, and decreed that said plaintiff, Thos. W. Nelson, have judgment against and recover from the defendant, Parish of St. Martin, the sum of four thousand five hundred dollars, with eight per cent. interest per annum from October 5th, 1868, and that the board
53 of assessors, or officers whose duty it is to assess taxes, forthwith do assess a parish tax at a sufficient rate per cent. upon the assessment roll of the current year to pay said judgment, and that the tax collector do proceed forthwith to collect said tax in the same manner that parish taxes are now collected, and the amount collected to be a special fund to pay said judgment.

Done, read, and signed, in open court, this 29th November, 1873.
(Signed) HENERY TRAIN,
*Judge 3d Jud. Dist.*

Filed November 29th, 1873.
(Signed) ALCIDE VEAZEY, *Clerk.*

*Police Jury's Record, marked M.*

Extract from the Record of the Police Jury of the Parish of St. Martin.

Regular session of the Police Jury, held on the 6th day of June, A. D. 1881.

Members present: A. Dugny, president, E. A. Duchamp, J. S. Robichaux, J. B. Corneau, and Oscar Durand.

* * * * * * *

54 Attorneys Mouton and Martin presented to the Police Jury the judgment of Nelson *vs.* the P'sh of St. Martin, amounting, with interest, up to date, to $9,090.00 dollars. Mr. G. B. Corneau moved the said judgment be looked over by the district attorney.

* * * * * * *

After reading the above, Mr. Robichand moved to adjourn until to-morrow 10 o'clock. Mr. Corneau seconded the motion. M. M. Durand and Duchamp voted against there being a tie. The president voted in favor to adjourn until to-morrow at 10 o'clock a. m.

*Police Jury Record*, 16*th July*, '68.

Defendant's Evidence, Document marked D, copied, p. 37.

Session of the Police Jury, held on the 16th day of July, 1868.

Dr. Alfred Duperier, president, and Messrs. Treville Thibodeau, Chas. Mestayer, Adolphe Berard, Valsin A. Fournet, and
55 Leon F. Gillard.

The minutes of last session were read and approved.

On motion, the p's'h tax for the year (1867) one thousand eight hundred and sixty-seven was definitely fixed at the sum of eleven thousand one hundred and ninety-two dollars.

On motion of Mr. Fournet, the following resolution was adopted:

Resolved, That an additional sum of two hundred dollars be, and the same is hereby, appropriated to build the bridge across Point Clair Coulee, payable one-half out of the contingent fund of 1866, and the other half out of the contingent fund of 1867; said work to be let out to the lowest bidder, after the usual advertisement in the Courier of the Teche, by Mr. Adolphe Berard, member from the 2d ward, at or near the old bridge on said Coulee.

56 On motion, Oniziphore Dellahoussaye, Jr., was duly elected parish treasurer for two years, to enter upon the discharge of his duties in his furnishing bond and security to the satisfaction of the president of the Police Jury, and the same deposited in the recorder's office.

On motion of Mr. Duperier, the following resolutions were adopted:

Resolved, That the president of the Police Jury be, and is hereby, authorized to draw on the parish treasurer a warrant in favor of the president and trustees of the corporations of the town of St. Martinsville, New Iberia and Breaux Bridge, each for the sum of one thousand dollars, payable out of the special appropriation, on the

tax of 1866, to build bridges on the Bayou Teche, within the limits of each of said corporations.

57 Resolved further, that the president of the Police Jury be, and is hereby, authorized to draw on the parish treasurer a warrant in favor of the president and trustees of the towns of St. Martinsville, New Iberia, and Breaux Bridge, each for the sum of three thousand five hundred dollars, payable out of any surplus funds in his hands, the proceeds of the taxes of 1865, 1866, 1867, and 1868, for the building of bridges over Bayou Teche, within the limits of each of said corporations.

Resolved, that in consideration of the above appropriations, the said corporations of St. Martinsville, New Iberia, and Breaux Bridge shall obligate themselves, by notarial act, to be entered into between the authorities representing said corporations, and the president of the Police Jury, to build, and forever keep in repair, the bridges within their respective limits. The president of the Police Jury shall require good and solvent security for the

58 faithful performance of the contract.

Resolved further, that said corporations shall have the same jurisdiction over said bridges which is now held under State laws, by the Police Jury; provided, however, that said corporations shall not have the right to charge toll to any resident of the parish.

Resolved, that said corporations, in consideration of their assuming to build and keep in repair the bridges within their respective limits, shall be exempt from paying to the parish any quota of taxes for building and keeping in repairs other bridges within the limits of the p'sh.

Resolved, that the pres. of the Police Jury be, and is hereby, authorized to enter into the above contract with any one of the above named corporations who will accede to said proposals.

59 Resolved further, that all resolutions previously passed on the same subject be, and are hereby, repealed.

On motion, Elie Montague, Jr., is appointed public school director of the 1st ward, in the place of J. A. Mestayer, deceased.

On motion, Messrs. Berard and Mestayer is appointed a committee to settle with J. A. Lereau, ex-parish treasurer, and report at the next regular meeting.

The report of the committee on claims was approved, and on motion, the following accounts were approved, and the parish treasurer is hereby authorized to pay them out of the different appropriations, on the certificate of the clerk of the Police Jury that the same have been regularly approved:

| | |
|---|---|
| G. G. Fournet, cost of election | $750 00 |
| J. B. Leblanc, building bridges | 50 00 |
| Emile Hebert, " | 20 00 |
| L. P. Moity, repairing court-house | 50 00 |
| Mariast, Fournet & Co., supplies furnished | 134 00 |

| | | |
|---|---|---|
| 60 | R. T. Eastin, just. peace 2d ward | $301 87½ |
| | Alfred Peschier | 22 25 |
| | Jos. Michaud, repairing court-house bell | 20 00 |
| | David Deroneu, building bridges | 50 00 |
| | Ozn. Delahoussaye, j'r const'bl 2d ward | 158 00 |
| | G. G. Fournet, jailor's fee | 29 46 |
| | L. P. Moity, work done in rec'd's office | 50 00 |
| | Ulger Decuir & Co., lumber | 406 75 |
| | H. Wallet, keeping ferry | 10 00 |
| | Valery Ledoux, repairing road and b'dges | 29 95 |
| | G. G. Fournet, sh'ff fees in criminal prosecution | 238 50 |
| | J. E. Darby, just. peace 1st ward | 10 00 |
| | Valery Thibodeau, justice of the peace 4th w'd | 21 00 |
| | G. G. Fournet, lumber for b'dge | 38 16 |
| | E. Deroneu, constable 1st w'd | 28 50 |
| | Oneziphore Delahoussaye, Jr., messenger of Police Jury | 10 00 |
| | Wm. Braemer, keeping prisoners in the Franklin jail | 162 50 |
| | Eugene Duchamp, special approp'tion for repairs to roof and gutter of ct. house | 75 00 |
| | Eugene Duchamp, special approp'tion for repairing road known as La Terasse | 300 00 |
| | Dr. Alfred Duperier, advertising bridges in the Planter's Banner | 22 25 |
| | Seldive Domengeaux, opening b'dge | 248 00 |
| | Adrien Freedman, keeper New Iberia ferry | 433 00 |
| | Corporation of New Iberia | 321 34 |
| | R. T. Eastin, Jailer Foutenette's acct. | 469 12½ |
| | Corporation of New Iberia | 292 93 |

61 On motion of Mr. Berard, the following resolutions were adopted:

1st. Resolved, that the clerk of the Police Jury be, and he is hereby, authorized and instructed to substitute drafts or warrants for all accounts due by the parish of St. Martin to parties having in possession acc'ts regularly approved by the Police Jury—special appropriations made for services—said drafts to be signed by the cl'k of the Police Jury and countersigned by the president.

2d. Resolved further, that the parish tax collector for the parish of St. Martin be, and he is hereby, specially instructed to receive in payment of parish taxes all accounts regularly approved, or warrants duly signed by the clerk and president of the Police Jury.

On motion, the Police Jury adjourned.
Evidence in file, No. 8020.

62 *Judgment.*

BOARD OF SCH'L DIRECTORS
*vs.*
O. DELLAHOUSSAYE, SR. } No. 8020.

This is an action brought by plaintiffs to recover from the de-

fendant the sum of $1,971\frac{40}{100}$, with interest thereon, from jud'c'l demand for taxes collected in 1874 and 1875 by defendant in his capacity as tax collector for sch'l purposes. The defendant pleads the general issue, and says that he has made a final settlement with the parish treasurer, in the absence of the treasurer of the sch'l b'd, who had left the parish permanently, and who had repeatedly refused to receive the school funds collected by defendant. He also calls the parish of St. Martin in warranty, and the parish att'ys for answer to the call in warranty, pleads a general denial, and aver that even if the allegations contained in defendants' answer be taken as granted, that the parish of St. Martin cannot be made
63 to answer for the action of her treasurer when acting outside of the function of his office.

The record discloses that the defendant collected during the year mentioned in pl'ff's petition for account of the p'sh, including the two mills' school tax levied by the Police Jury, the sum of $10,714.98, and that when the defendant was ready to settle in Dec., 1874, with the treasurer of the sch. b'd, the said treasurer refused to receive any money from the defendant, who after advising with R. S. Belden, then dist. att'y of this 3d jud'l dist., paid the total amount collected by him over to the treasurer of the p'sh, who received the same under instructions from the p'sh attorney, gave the defendant a receipt for the amount.

From the statement of facts, it is very clear that the defendant has accounted for and paid over to the treasurer of the parish
64 all money collected by him for sch'l purposes, and the only question which presents itself is whether the payment to the p'sh treasurer releases the defendant. Had the treasurer of the sch'l b'd not refused to receive the money, and make a settlement, the case might be different; but considering his refusal, coupled with the fact that the money collected, was collected under a resolution of the Police Jury, imposing a tax of two mills for sch'l purposes, I think the defendant is released from liability, and should be compelled to pay twice, when [he] has acted in good faith, as has been shown in this case.

Let pl'ff's demand be rejected with costs.

(Signed) THEO. FONTELIEU,
*Judge 3d Jud'l Dist.*

R'd and filed Dec'r 3d, 1877.

(Signed) ALCIDE VEAZEY, *Clerk.*

65 The State of Louisiana, Supreme Court of the State of La., 3d Dist., Opelousas.

*Court.*

The court met Thursday, the 13th day of June, A. D. 1878.

Present: Their Honors Thos. C. Manning, chief justice; Robt. H. Marr, Alcibiade DeBlanc, William B. Spencer, associate justices.

Appeal from District C't, P'h St. Martin.

BOARD OF SCH'L DIRECTORS *vs.* O. DELAHOUSSAYE, Sr.

In this cause the court this day delivered their opinion in writing in the words and figures following, to wit:

WM. B. SPENCER:

This suit is brought to recover of defendant the sum of $1,971 $\frac{46}{100}$, the am't of p'sh sch'l tax of 1873, collected by him as the State and p'sh collector of St. Martin parish during the years 1874 and 1875. The defendant does not dispute the collection, but claims to have paid over the am't to the p'sh treasurer of said p'sh,
66 from whom he rec'v'd. Defendant further claims that the p'sh of St. Martin is bound to warrant and indemnify him against plaintiff's demand, and he prays that the parish be cited, and for judgment in warrant, &c. The parish answers by a general denial, and by averment that if the parish treasurer received said sch'l collections he had no authority so to do, and the p'sh is not bound by his acts done outside of the scope of his official duties.

There was judgment for defendant, and pl'ff appeals. The facts which are material appear to be as follows:

Baker, the treasurer of the sch'l b'd, had left the parish, and refused to receive the school funds so collected by defendant, who thereupon, by advice of the dist. att'y, paid the amount of the
67 sh'l tax into the hands of Arny, the parish treasurer, in common with, and as other parish taxes, and took his receipt for the gross sum paid. It is shown to our satisfaction that the school tax was included in this payment to the parish treasurer. It is also shown that the Police Jury, in open session, on the 5th July, 1875, carefully examined and accepted said settlement between the treasurer and collector. There are but two questions presented for our decision:

1st. Was the payment of the sch'l tax to the parish treasurer a valid payment?

And did it discharge Delahoussaye?

2d. If not, can he recover the amount then paid in error from the parish of St. Martin?

1st. As to the authority of the parish treasurer to receive the sch'l fund tax:

By section 2 of act 122, of 1874—

68 Tax collectors are expressly prohibited from turning over school taxes collected, to any police jury or parish treasurer, or to other persons than the treasurer of the school b'd.

This was the law in force up to 1877, and is that by which these rights of these parties are to be tested.

Subsequent legislation in 1877, making the parish treasurer *ex officio* treasurer of the sch'l board, cannot retroact so as to legalize the payment made in 1875.

The collector was bound to await the appointment of another sch'l treasurer, if there was none, or to compel the reception of the money by him, if there was one.

His refusal to receive the funds could not justify the defendant in paying to one not only not authorized, but forbidden to receive.

We hold, therefore, that payment to the parish treasurer
69 did not discharge defendant, and that he must account to the sch'l board, which has, we think, undoubted right to require it.

2d. The evidence satisfies us that the defendant in good faith paid over the fund to the parish treasurer, and that the police jury approved and accepted that settlement, and that the people of the parish have profited by it. The money thus paid is either yet in the parish treasury or it has been disbursed for the use of the parish. He who receives what is not due to him, whether he receives it through error or knowingly, oblige himself to restore it to him from whom he unduly received it. C. C., (old) 3379. Equity and good conscience forbid that the parish should thus enrich itself at the expense of defendant, who acted in this manner erroneo-
70 ously but honestly. The parish should protect him and promptly reimburse to him or the school fund the amount thus unduly received.

It is therefore ordered, adjudged, and decreed, that the judgment appealed from be avoided and reversed, and it is now decreed that the plaintiff do recover of the defendant, Oneziphere Delahoussaye, the sum of nineteen hundred and seventy-one $\frac{46}{100}$ dollars with legal interest thereon from 1st September, 1875, till paid, and costs, said sum to be paid to the treasurer of the school funds of the parish of St. Martin.

And it is further decred that the said defendant do have and recover from the parish of St. Martin the like sum ($1,971 $\frac{46}{100}$) with like interest from same date, together with all costs of the suit.

71 State of Louisiana, T. Benj. R. Rogers, clerk of supreme court, 3d dist. of the State of La., holding sessions at Opelousas, do hereby certify that the foregoing is a true and correct copy of the original opinion and judgment of said supreme court on file and of error in my office.

In testimony whereof I hereunto set my hand and affix the seal of my office at Opelousas, this 27th day of June, A. D. 1878.

[SEAL.] (Signed) BENJ. R. ROGERS,
*Clerk Sup. Court 3d D. La.*

THE STATE OF LA.

B'D OF SCH. DIRECTORS
*vs.*
O. DELAHOUSSAYE, SR. } Sup. C't 3d Dist. Opelousas.

To the judge of the 3d jud'l dist. court, parish of St. Martin, greeting:

Whereas, it hath seemed fit and proper to the supreme court of

the State of La. holding session at Opelousas, in the above-entitled cause to order that the judgment appealed from be avoided
72 and reversed, and it is now decreed that the plaintiff do recover of the defendant Oneziphore Delahoussaye, the sum of nineteen hundred and seventy-one $\frac{46}{100}$ dollars, with legal interest thereon from 13th September, 1875, till paid to the treasurer of the sch'l funds of the parish of St. Martin.

And it is further decreed that the said defendant do have and recover from the parish of St. Martin the like sum (197 $\frac{46}{100}$), with like interest from same date, together with all costs of this suit, as will appear by the opinion and judgment of said supreme court, a true copy of which is hereunto annexed.

You are therefore hereby commanded to proceed in the cause aforesaid, according to the judgment aforesaid, and to cause execution to issue for the sum of twenty dollars, costs of this appeal.

73 Witness the Hon. T. C. Manning, chief justice of said sup. court at Opelousas, this 27th day of June, A. D. 1878.

(Signed) BENJ. R. ROGERS,
*Clerk Sup. C't 3d Dist. La.*

R'd filed July 10th, 1878.

(Signed) JOS. BORDIER, *D'y Clerk.*

*Police Jury Record, Marked No. 2.*

Regular Session of the Police Jury held on the 2d day of May, A. D. 1881.

Were present: Messrs. A. Dugny, president; J. B. Corneau, E. A. Duchamp, O. Durand, and J. S. Robichand. The minutes of the last session were read and approved.

On motion of Mr. J. B. Corneau:

Resolved, That the secretary is ordered to issue notices to the committees appointed in the previous meeting.

On motion of Mr. O. Durand:

Resolved, That Messrs. O. Durand, F. Bernard, and E. Merin are appointed a committee to open a drain from Declouet's plantation to O. Durand's plantation.

On motion:

74 Resolved, That the tax for 1881 be fixed at 10 mills on a dollar.

On motion of J. B. Corneau:

Resolved, That the parish warrants of 1881 shall be receivable in payment for the taxes of 1881 by the collector.

The following schedule was adopted by the board, to wit:

| | |
|---|---|
| Assessor of votes | $130 00 |
| " taxes | 400 00 |
| For bridges and lumber | 1,500 00 |
| For coroner | 75 00 |
| Clerk Police Jury | 250 00 |
| Collected of taxes | 600 00 |

| | |
|---|---|
| Witnesses in crim. cases | $300 00 |
| Keeping of bridges | 400 00 |
| Jail-keeper | 400 00 |
| Jurors | 500 00 |
| Legal adviser | 150 00 |
| Justice of peace and constable | 500 00 |
| Messenger | 75 00 |
| Official paper | 100 00 |
| Police jurors | 400 00 |
| Paupers | 175 00 |
| Parish treasurer | 450 00 |
| Clerk of court for index | 500 00 |
| Sheriff in criminal cases | 300 00 |
| Sheriff for opening court | 300 00 |

Contingent fund.

75 On motion resolved that 680 ft. of lumber be furnished to B. A. Wilkins and S. A. Marks, road overseers, of the 5th w'd, to build 3 bridges in said ward.

The committee appointed to accept the bridge built in fifth w'd by B. A. Kidder, rep'ted favorably.

Resolved, That a warrant of 100 dollars be issued in favor of B. H. Kidder, for building a bridge in fifth ward.

Resolved, That Mr. F. Berard be appointed in place of Paul Declouet, resigned.

Mr. J. S. Robichand presented a petition of about twelve hundred signatures of tax-payers of the parish of St. Martin, asking the Police Jury to order an election for the removal of the seat of justice from St. Martinsville to the town of Breaux Bridge. After discussion, Mr. J. B. Corneau moved that said petition be laid on the table until the next meeting of the Police Jury.

76 The following acct's of 1880 were approved:

| | |
|---|---|
| E. Richard, d'y sh'ff | $7 20 |
| Chas. Nectoux, juror | 1 60 |
| Ed. Ducrest, " | 3 40 |
| Ed. Wooley, " | 1 50 |
| Cassimer Wiltz, " | 9 10 |

Of 1881.

| | |
|---|---|
| Theo. Castilo, jailor | 8 60 |
| Peter Roe, juror | 7 60 |
| W. H. Jones, juror | 6 30 |
| Cesair Landry, juror | 3 30 |
| Chas. Gordon, juror | 3 50 |
| Mike Alexandre, juror | 3 30 |
| S. V. Martin, surveyor | 12 00 |
| L. P. Domengeau, jailor | 3 20 |
| " " | 6 00 |
| " " | 7 00 |

| | |
|---|---|
| L. P. Domengeau, jailor | $2 50 |
| " " | 19 50 |
| " " | 6 50 |
| " " | 7 50 |
| " " | 14 00 |
| " " | 4 00 |
| " " | 14 00 |
| Jerry Washington, messenger | 6 25 |
| " " | 1 25 |
| B. A. Kidder, for building b'dge | 100 00 |
| Observer | 15 00 |
| " | 25 00 |

77

| | |
|---|---|
| A. P. Mora, constable | 2 25 |
| " " " | 1 65 |
| " " " | 3 50 |
| " " " | 7 00 |
| " " " | 3 25 |
| " " " | 2 25 |
| " " " | 2 15 |
| Raphael De Blanc, just'e of Pc. | 1 25 |
| " " " " " " | 1 25 |
| " " " " " " | 1 43¾ |
| " " " " " " | 1 37½ |
| " " " " " " | 1 50 |
| " " " " " " | 1 62½ |

On motion, the meeting adjourned *sine die*.

"Signed" J. A. DOMENGEAUX,
*Sec'y P. Jury.*

78 *Act* 208 *of* 1868.

No 208. An act to form a new parish to be called the Parish of Iberia.

SEC. 1st. Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened:

That, from and after the passage of this act, there shall be a new parish, formed from a portion of the south part of the P'sh of St. Martin, and from a portion of the north part of the P'sh of St. Mary, to be called and known by the name of the Parish of Iberia.

SEC. 2d. Be it further enacted so that the following shall be the boundaries of the Parish of Iberia) viz: beginning at the Gulf of Mexico, at the entrance to the Southwest or Vermillion Pass; thence along the middle of the main channel of said Pass to the entrance into Vermillion Bay, thence in a direct line to the
79 mouth of Petite Anse Bayou; thence in a direct line to the western shore of Lake Peigneur; thence along the western shore of said lake, and along the line dividing the parishes of St. Martin, Vermillion, and Lafayette, to a point intersected by a line

running east and west two and one half miles north of the township line between townships eleven and twelve south, in range five east; thence due east to the township line between ranges five and six east; thence southeast to the upper line of lands now belonging to S. M. Darby (originally confirmed to J. Foutenette, commonly represented number fifty-nine); thence northeastwardly along said upper line to Lake Tasse; thence southeastwardly through the middle of said lake in a direct line to the upper line of lands now owned by John F. Wyche; thence along said upper line to
80 the Bayou Teche; thence crossing said bayou to the upper line of lands belonging to J. F. Wyche, following said upper line to the depth of forty arpents; thence following the rear concessions of lands lying south of J. F. Wyche, and fronting Bayou Teche, at a distance of forty arpents from said bayou, to the south line of Oneziphore Delahoussaye; thence circumscribing the land of said Oneziphore Delahoussaye to Coulie Portage, following said coulie to Bayou Portage; thence along the middle of said bayou to Lake Sausse Point, and through the middle of said lake to a point intersected by the township line between townships eleven and twelve south; thence east along said line to the eastern limits of the parish of St. Martin, on Grand river; thence southwardly with said limits to the line between townships twelve and thirteen south; thence westwardly in a
81 direct line to the northwest corner of the lands of Chas. Grevemberg; thence southeastwardly across the Bayon Teche, along the upper line of said lands of Chas. Grevemberg, and in a direct line to the sea marsh; thence through said sea marsh midway between the high lands of Cypremort and Grand Cote to Vermillion Bay; thence through said bay to the southeast pass of Cote Blanche Bay; thence along the coast of the Gulf of Mexico to the point of beginning, including Petite Anse Island.

SEC. 3. Be it further enacted, &c., that it shall be the duty of the Governor, immediately after the passage of this act, to nominate, by and with the advice and consent of the senate, to appoint for the said parish a sheriff, a recorder, and all other officers that may be necessary therefor, whose powers and duties shall be the
82 same as those of other judges, sheriffs, recorders, and like officers throughout the State.

SEC. 4. Be it further enacted, that it shall be the duty of the parish judge of the said parish of Iberia, immediately after he receives his commission, to convene the several justices of the peace to meet at a convenient time and place, a majority of whom shall form a quorum, for the purpose of laying off four police jury districts in said parish.

SEC. 5. Be it further enacted, &c., that the parish judge of the p'sh of Iberia, as soon as the police district shall have been formed as required by the foregoing section of this act, and after giving regular notice of time and place, shall cause an election to be held

by a justice of the peace in each police district for the election of two members of each district to the police jury.

83 SEC. 6. Be it further enacted, &c., that the town of New Iberia shall be the county seat of said parish; and that the parish judge shall convene the members of the police jury, immediately after the election, at the town of New Iberia, for the purpose of causing to be erected thereat the necessary public buildings.

SEC. 7. Be it further enacted, &c., That the parish judge shall keep his office at the county seat of said parish, and that the said parish shall form a part of the 3d judicial dis't of the State, and the dis't court for said parish shall be held at the seat of justice thereof, at such time as may be fixed by law.

SEC. 8. Be it further enacted, &c., That it shall be the duty of the clerks of the district and parish courts of the parishes of St. Mary and St. Martin, to transmit to the clerks of the district and parish courts of the parish of Iberia, all petitions, answers, docu-

84 ments and papers appertaining to suits wherein the defendant, or defendants, reside within the parish of Iberia.

SEC. 9. Be it further enacted, &c., That immediately after the passage of this act it shall be the duty of the recorders of the parishes of St. Mary and St. Martin, to make a true copy of the records of all acts, deeds, and titles, papers of record, in their respective offices, relative to or affecting landed property situated within the limits of the p'sh of Iberia, which the said recorders shall cause to be transcribed in a well-bound book, or books, paragraphed *ne varietur* at the top and foot of each page accompanied by a certificate at the end of each book, with the seal of the said recorders affixed to the end of their respective book or books, all of which shall be made, and with the original acts and title deeds be transmitted by the said recorders, respectively, to the *to the* re-

85 corder of the parish of Iberia at the expense of the parish of Iberia.

SEC. 10. Be it further enacted, &c., That until otherwise provided for by the legislature, the parish of Iberia, hereby created, shall be represented in both branches of the general assembly by the duly qualified representatives of the parishes of St. Mary and St. Martin.

SEC. 11. Be it further enacted, &c., That in due time, and before the expiration of the term for which the representatives of the parishes of St. Mary and St. Martin have been elected, the general assembly shall make the necessary provission in order that the said p'sh of Iberia may be duly represented in said general assembly.

SEC. 12. Be it further enacted, &c., That nothing in this act shall prevent the collectors of St. Mary and St. Martin from

86 collecting the arrear taxes which may be due within the limits of said parish of Iberia, including the taxes for the year eighteen hundred and sixty-seven.

SEC. 13. Be it further enacted, &c., That the sheriff of the parish

of Iberia, before entering on the duties of his office shall give bond in the penal sum [of] eight thousand dollars, with similar securities, and under the same conditions as are required of the sheriff, for the faithful performance of the duties of their office, and for the collection of and accounting for all taxes and fines, and other sums which it may be his duty to collect.

SEC. 14. Be it further enacted, &c., That the school fund for said parish of Iberia shall be provided in the same manner as for the other parishes of the State.

87 SEC. 15. Be it further enacted, &c., That the existing laws and rules of practice for the several courts held in the parish of St. Martin, relative to public notices and advertisements, and in relation to all judicial sales made in said parish of St. Martin, shall be and exist in full force in the parish of Iberia.

SEC. 16. Be it further enacted, &c., That the Police Jury of the parish of Iberia shall have all the powers that are now possessed by, and be subject to all the duties that are now enjoined upon the Police Jury of the parish of St. Martin.

SEC. 17. Be it further enacted, &c., That this act shall take effect from and after its passage.

(Signed) CHAS. U. LOWELL,
*Speaker of the House of Repres.*

(Signed) OSCAR DUNN,
*Lieut-Governor and President of the Senate.*

Approved Oct. 30th, 1878.

(Signed) H. C. WARMOUTH,
*Governor of the State of La.*

A true copy.

GEO. E. BOVEE,
*Secretary of State.*

88 *Statement Showing Indebtedness of the Parish.*

21st Jud. Dist. Court, No. 8371. P'sh of St. Martin.

STATE *ex rel.* T. W. NELSON *vs.* POLICE JURY OF ST. MARTIN P'SH.

I, J. A. Domengeaux, do hereby certify that the following is a true and correct statement and recapitulation of the registered warrants or outstanding evidences of the indebtedness of the parish of St. Martin, as registered by me as clerk of the Police Jury of said parish, in a book kept for that purpose, at their request, to wit:

| | |
|---|---|
| For the years prior to 1880 up to date | $2,243 07 |
| For the year 1880 up to date | 7,194 54 |
| For the year 1881 up to date | 1,039 44¼ |
| Total | $10,477 05¼ |

Ten thousand four hundred and seventy-seven dollars and five cents and one-fourth.

Given under my hand this 27th day of June, 1881.
(Signed) J. A. DOMENGEAUX,
*Sec'y Police Jury, P'sh of St. Martin.*

R'd and filed June 27th, 1881.
(Signed) JOS. BORDIER, *D'y Clerk.*

89 *Clerk's Certificate.*

STATE OF LOUISIANA, *Parish of St. Martin:*

The undersigned, clerk of the 21st jud'l dist. court, do hereby certify that the above and foregoing pages, numbered from 1 to — inclusive, contain a true and correct and complete transcript of all the documents filed, all the testimony adduced, and all the proceedings had in the case numbered 8371, of the docket of the 21st jud'c'l dist. court of Louisiana, holding sessions within and for the parish of St. Martin, wherein State of La. *ex rel.* Thos. W. Nelson is plaintiff, and the Police Jury of the parish of St. Martin *et als.* are defendants.

In witness whereof I have hereunto set my hand and affixed my seal of office, at St. Martinsville, parish of St. Martin, this 29th day of June, A. D. 1881.

[SEAL.] H. FOURNET,
*Clerk 21st Jud'l Dist., St. Martin P'sh.*

90 The State of La., Supreme Court of the State of La., 3d Dist., Opelousas.

The court met ——, the — day of July, 1881.

Present: Their Honors, Edward Bermudez, chief just.; Felix P. Poché, Robt. B. Todd, Wm. M. Levy, Chas. E. Fenner, assoc't just's.

STATE *ex rel.* F. W. NELSON
*vs.*
POLICE JURY, PARISH ST. MARTIN. } No. 1124. Appeal from 21st Jud. D., Ps'h St. Martin.

In this cause the court this day delivered their opinion in writing in the words and figures following, to wit:

Edward Bermudez, J., the relator, applies for the levy by mandamus of a special tax by the defendant to pay a judgment in his favor for $4,500 and interest against the parish of St. Martin. Several times has the relator already submitted his grievances to this court. 28 A, 578; 30 A, 1103; 32 A, 884. The case was
91 before us last term. We found the *relator* in presence of the defense. That the law under which he sought relief had been repealed, and that the proceeding was unwarranted. To this attack he replied that the repeal was inoperative, as his judgment—as his judgment rested on a contract shielded by the Constitution of the United States, which protects the obligations thereof from all impairment.

There was no allegation of a contract in the petition, but with a

view to afford the relator an occasion to amend, we thought it our duty "in furtherance of the ends of justice to remand the case, in order that the relator may have an opportunity of establishing that his judgment is founded on a contract, if such be the case, and that the defendant may adduce such further evidence and make such other defences as the nature of the suit may require." 32 A, 888.

92 We did not mean or say that the case in which the judgment relied upon was rendered should be reopened, and that the issues involved and determined should be tried *de novo*. We would have been powerless to do so. We merely intended to permit the relator to allege and prove a material fact in support *in support* of the present proceeding, viz: a protected contract.

On the trial on the remandment we, however, assumed to prove, in the absence of averment, the existence of the contract, invoked not only by the record in which the judgment was obtained, but also by supplementary evidence, to the introduction of which objection was made, the propriety of which we deem it unnecessary to pass upon. Conceding, *arguendo*, that the relator has averred that his judgment is predicated by a contract; that the record in the case mentioned, and the additional proof, establish a contract, (ques-

93 tions on which we express no opinion.) We are irresistibly divided to the inquiry, whether the relator, under his judgment and under the contract, is entitled to the special tax which he demands, over and above the constitutional limit, if a transgression be necessary. The judgment rendered has become definitive; it constitutes *res adjudicata*, and can no longer be impugned as to issues involved and determined. Whatever issues it settles are irrevocably conclusive upon the parties to it; but what is it that was at issue; what is it that it adjudicates; what is it that it is based upon?

The question presented for solution was: Shall the plaintiff record judgment for the amount claimed, and shall a tax be levied to pay such judgment? The issue was not whether the claim was based on a contract or not. There was no contention on the

94 subject, and the judgment does not pass upon any such question. It is true that the defendant might, if a contract existed, have resisted the prayer for the levy of a special tax, and thus raised an issue as to the existence and validity of such contract. The defendant did not do so, and no issue was formed and determined on that subject. The plaintiff and the court which rendered the judgment acted, no doubt, under the impression that the law then in existence required that a provision should be made at the time plaintiff's claim was liquidated for its payment by the levy of a tax. R. S. Sec. 48 and 49, 26, 28, 29, 30, 47. The judgment therefore was simply for a sum of money and for a tax to pay it. It would have necessarily been the same had the suit had been one for damages, founded on no real contract *at all*.

We therefore remanded the case for information as to the

95 consideration of the judgment in order to enable us to de-

termine the question of impairment of the obligation of a contract raised by the relator. But were it not so the right of the relator to a tax has been by himself submitted as *res nova* for determination. By the judgment rendered in 1873, liquidating his demand, a tax was ordered to be levied to pay it at a *sufficient* rate per cent. upon the assessment of the *current* year.

It is manifest that this judgment has not been satisfied by payment or executed by the levy of the tax directed, otherwise why the present proceeding?

By the lapse of time, and therefore of circumstances, it is clear the judgment, as regards the levy of the tax, has ceased to be executory, and has passed out of existence, inasmuch as the defendant cannot under its terms be required to do *nunc* in 1881 what it directed to be done *sunc* in 1873. By the present proceeding, and by his course in the lower court, in adducing evi-
96 dence other than the record in the case in which the judgment was rendered, the relator has admitted his legal inability to have that portion of the judgment, for the tax *bi terminis*, executed and its consequent cadicity.

He has abandoned all pretensions to its enforcement, and seeks now at the hands of the court another and different judgment, allowing him a tax of —— per cent. on the property of the parish, according to the assessment rolls thereof for the *current* year, to pay his judgment of 1873. He has thereby reopened the question of his right to such tax, and of the existence, validity, and extent of claim under the contract. The judgment of 1873 fixed no percentage rate of assessment, and so was not executory, as it left the *quantum* of the rate within discretion. The judgment appealed from is definite, and directs a levy of ten mills, if necessary, over and above the
97 *quantum* of taxation, limited by art. 209 of the constitution.

As the relator has undertaken notarily to show a specific contract, but also the nature and extent of that contract, he has opened the door to the defendant to establish that under the terms of such contract he is not entitled to the remedy sought by him. What is the evidence now before us on the subject? We gather from the record, as it is now presented, that the judgment was obtained on two notes, or bonds, or obligations signed by the president of the Police Jury of the parish of St. Martin, on the 5th of October, 1868, purporting on their face to have been issued, in pursuance of authority delegated by a resolution of that body, adopted on the 16th of July previous, and identified with a notarial act of even date with them. The resolutions authorized the president of the Police Jury to draw on the parish treasurer warrants in favor of the
98 municipal authorities of the town of New Iberia for $4,500 for the building of a bridge over Bayou Teche, within the limit of the corporation, payable to the extent of $1,000 out of a special appropriation on the tax of 1866, and for $3,500 out of any surplus funds in the hands of the treasurer the proceeds of the taxes of 1865, 1866, 1867, 1868.

It was not until the 5th of October following that an act was passed between the president of the Police Jury and the town authorities of New Iberia on the subject, and that the warrants, under the form of *promise to pay*, were drawn.

By act 208, approved Oct. 30th, 1868, the town of New Iberia was detached from the parish of St. Martin to form part of another parish, known as the parish of Iberia. The act is silent as to the mode of payment of the indebtedness incurred, and to be satisfied by the parish of St. Martin enuring to the benefit of the detached territory. To all appearances it was only after the dismemberment had been effected that the bridge was contracted for and constructed.

99 There is nothing to show that the work was done, but the inference is unavoidable from the fact that the obligations were altered by the municipal authorities of New Iberia, and are now held by the relator, who has alleged and established title to them, contradictorily with the Public Jury of St. Martin parish, in the shape of the judgment declared upon and made the foundation of the present proceeding. Those obligations were the inducement offered and accepted for the construction of the work of public improvement. If it be legal, under the peculiar and unfortunate circumstances of this case, to fasten the responsibility for the payment of those obligations on the parish of St. Martin, it is likewise lawful and just besides to hold their owner to a strict observance of the terms and conditions under which they were issued, which he accepted, and which have not been in any manner subsequently modified by the parish of St. Martin; while the re-

100 lator is entitled to all the rights which the "promises to pay" under the resolution, the act, and the judgment confer, he cannot escape the obligations which they impose, or the limitations with which they have been surrounded. The resolution of the 16th of July, 1868, being expressly referred to in the body of the obligation owned by the relator, forms part of them, the more so as it is also mentioned and reiterated in the notarial act with which they are identified. If there exist a contract, it is that evidenced by the resolution, the act executed in furtherance of it, and the obligations altered in conformity with it, and which were recognized as binding on the parish of St. Martin. To that contract the relator points as the foundation of the present proceeding; of that contract only can he seek a specific performance. Under that contract he is entitled to be paid in a particular manner exclusive of all others, by specific appropriation and covenant.

101 The resolutions to which the obligations refer declare that these snall be paid to the extent of $1,000 out of taxes of 1866, and to the extent of $3,500, out of any surplus funds in the hands of the p'sh treasurer, as the proceeds of taxes of 1865, 1866, 1867, and 1868.

Thd relator seeks in this action the immediate levy of a tax on the taxable property of the parish according to the assessment roll of the current year, sufficient to realize the amount needed to pay

the judgment in his favor for $4,500, with interest and costs. He is clearly not entitled to that relief.

In ruling as we do, we leave out of view, not only art. 209 of the constitution in form, but also act 56 of 1877, charged as impairing the obligation of the alleged contract, and which were both intended for public relief.

We are thereby dispensed from the necessity of determining the question of impairment of such contract.

We decide that under the constitution and laws of the
102 State, and under the evidence, we are justified in restricting relator to the terms of the contract which he invokes, and which provides for payment of his claim in a manner different from that which he demands.

We hold the parties to their engagements, and render them the justice to which they are entitled under the exceptionally complicated circumstances of the case submitted for determination. We think the judge *a quo* erred in his conclusions.

It is therefore ordered and decreed that the judgment appealed from be reserved and proceeding to render such judgment as should have been rendered.

It is ordered, adjudged, and decreed that there be judgment for the defendant, rejecting the demand of relator, with *costs in both courts.*

Messrs. Justices Levy and Fenner recuse themselves, the former having been of counsel in the case, the latter having been
103 consulted as counsel in a similar case, and being individually interested in an analogous suit to be determined in the same manner as the present one.

The remaining three members of the court, being unable to concur, their honors, G. W. Ludspeth, dist. judge of the dist. court for the 13th jud'l dist., and John Clegg, judge of the dist. court for the 25th jud'l dist., were called upon, under the provision of art. 85 of the constitution, to sit in the place of the justices recused, and have done so.

Mr. Justice Todd dissents from the opinion and decree of the court, then composed of their honors, E. Burmudez, chief justice, F. P. Poche, assoc't justice, and G. W. Ludspeth and John Clegg, district judges.

104 STATE OF LOUISIANA, *ex rel.* THOS. W. NELSON
*vs.* } 1124.
POLICE JURY, PARISH OF ST. MARTIN.

*Dissenting Opinion.*

TODD, J.—On the 29th of November, 1873, the relator obtained a judgment against the Parish of St. Martin for $4,500, with eight per cent. interest per annum thereon, from *from* the 5th of October, 1868. No appeal was taken from this judgment. In 1875, the parish brought an action to annul this judgment, on grounds assailing its consideration, and the authority of the Police Jury of

the parish to contract the debt on which it was rendered. This action was brought by appeal to this court, which rejected the demand for the reason declared: "that all the defenses to the judgment then urged might have been pleaded as defenses to this
105 suit in which the judgment was rendered. See Jas. Robichand, president Police Jury, vs. Thos. W. Nelson *et al.*, 28 A, 578.

The judgment against the p'sh in favor of relator rendered in 1875, as stated, ordered the assessment and collection of a special tax sufficient to pay the amount thereof, the tax to be levied and collected by the terms of the judgment immediately after its rendition.

The relator alleging that notwithstanding repeated demands, the police judge of St. Martin had refused to pay the judgment, or to assess any tax for its payment, applied to the dist. judge of said parish for a mandamus to compel that body to assess, and the tax collector to collect a sufficient tax to pay the debt. The mandamus was granted and made peremptory by the district judge; an appeal was taken from his decision, and the case came before this court at the last term, held here (Opelousas) in 1880.

106 The case was heard on appeal and remanded to the lower court. The cause or reason of the remanding will be more fully understood by referring to the language of the court in the opinion rendered on the occasion which we quote in part—the parts bearing on this particular point—as follows: "The present proceeding is instituted against the Police Jury of the parish of St. Martin, and has for its object to compel them by mandamus to assess, collect, and apply a special tax for the payment of the relator's judgment. The application is resisted on two grounds:

1. The State and parish tax collector was not made a party.

2. The law under which the judgment was rendered, for the levy and application of the tax, was repealed by act No. 56 of 1877. As a corollary it was argued in the pleadings that said law, being essentially a remedial law, its repeal did in no wise impair
107 the relator's rights, but merely suspended or abolished one of the means by which his said vested rights could be exercised or executed; it is therefore valid and constitutional. The judge directed the assessment of a special tax of one per cent. and the police jury has appealed from it.

First. The State and parish tax collector was served and has joined issue, and is therefore a party.

Second. The act of 1877 should be no bar to the exercise of the remedy accorded by law to the plaintiff, and which was in force at the time he obtained his judgment, and which, not only theoretically, but practically, formed part of that judgment, *provided* that judgment be founded on a *contract*.

The only evidence before us is the judgment. Neither the pleadings, nor the evidence on which judgment was rendered, are in

108 the record. The very petition in the present proceeding is silent on the subject of the obligation of the parish to pay the judgment as springing from a *contract*. If the judgment relied upon was not founded on a contract, we would be powerless to enforce its its payment in the manner proposed, prohibited, as we would be from so doing, by Art. 209 of the constitution of 1879, limiting taxation to ten mills, as was held in the State *ex rel.* Folsom *vs.* City of New Orleans, recently decided. * * *

We think it our duty, in furtherance of the ends of justice, to remand the case, in order that the relator may have an opportunity of establishing that his judgment is founded on a *contract*, if such be the case, and that the defendant may adduce such further evi-
109 dence and make such other defenses as the nature of the suit may require. It is clear to my mind from the foregoing that the object of the remanding of the proceeding to the lower court was to ascertain whether the judgment in question was founded on a contract or not. If it should prove according to the evidence to be adduced in the lower court to be founded on a contract, then there was a strong implication, according to my construction of the language of the former opinion just quoted, that a *contract* being shown as the basis of the judgment, that then the relator could be entitled to the remedy sought, and the mandamus would be made peremptory. It, in effect, said to the relator: Return to the lower court, prove that your judgment was upon a contract, and receive your writ to compel its payment.

It is stated in the opinion of the majority of the court just
110 read, that the terms of the remanding did not authorize or mean a reopening of the case, in which the judgment had been rendered, with a view to the admission of evidence affecting the merits or consideration of the judgments. Besides, it was beyond the power of this court to remand for any such purpose.

The judgment had been rendered for seven years or more, and a demand for its nullity had been rejected. It was *res adjudicata*, a finality conclusive as to the fact that the parish owed the relator the debt evidenced by the judgment, whether it was a righteous or unrighteous debt was beyond inquiry. The only question left open to be asked and answered was, *was the judgment founded* on a contract, or *did it grow out of a tort;* for it must have been
111 based on one or the other. The case was remanded, the necessary inquiry made, and the evidence adduced, which, upon my mind, leaves not the shadow of a doubt that the judgment against the parish of St. Martin, which the relator is here before us asking to be enforced, was founded on a contract; and in my opinion he has fulfilled the sole condition on which the exercise of his right was suspended beyond previous decree, by establishing that his judgment *was* founded on a CONTRACT. With this showing, I think he can now sufficiently [righttully] claim the remedy he seeks; to refuse it, would be virtually, in my opinion, denying him the protection to which he is entitled, under the clause of the Federal Constitution forbid-

ding the impairment of a contract, a protection which this
112 court recognized as bearing on this question in its former opinion referred to, and made *emphatically* in the State *ex rel.* Martin *vs.* Police Jury of Caddo, 32 A, 1028, when it declared, referring to the obligations of another parish, that "the contract in existence between the bondholders and the parish of Caddo is protected from impairment by the Federal Constitution, and must be enforced." This was the language of an unanimous court, as was that quoted above, from our former opinion in this case. The judgment was rendered upon notes executed by the president of the Police Jury of St. Martin, and their notes given for the building of a bridge.

I see no reason for extending inquiry beyond those simple facts, as they alone have a bearing on this question of a contract; and in view of this single and simple issue in the present state of the
113 proceeding before us, I cannot readily appreciate the bearing and pertinency of the questions discussed in the majority opinion about the injustice of the debt or the hardship of its payment by the debtor, particularly since it is admitted in that opinion that the judgment is *res adjudicata.* Nor do I find anything in the course pursued by relator's counsel in the introduction of his evidence on the last trial in the lower court upon the question of contract or no contract that opened the way to a broader investigation, and rendered the matters mentioned a legitimate subject of discussion in this case. All that he did in this connection strictly pertained to proving his contract. It is highly probable that if the considerations, now so ingeniously and ably urged touching this debt, had been used as defenses against the demand before
114 judgment, the judgment would never have had an existence.

This court, in the decision referred to in the suit of nullity, cited 28 A, 578, declared that similar considerations, or others quite as formidable, though urged in a proper action and at a more seasonable time, could not be listened to. I am equally of that opinion now; nor can I see anything in the failure or refusal of the judgment debtor, the parish of St. Martin, to obey the mandate of the court embraced in the judgment, and levy the tax ordered to pay the debt at the time ordered, can now be held as giving the parish an immunity from the debt and enabling to so profit by the default as virtually to destroy the remedy of the condition and leave him with a barren judgment, stripped of all means of enforcing it; such I construe to be the effect of the decree just rendered—that it restricts him expressly to the tax ordered in 1873 by the
115 judgment when rendered, as the sole resource for getting his money, when it must be apparent that no such fund was ever raised, and had it existed would long since have disappeared. For these reasons, hastily prepared in the limited time allowed me, I dissent.

*Extracts from Minutes of Sup. Court, June* 10, '78.

THE STATE *ex rel.* THOS. W. NELSON
*vs.*
ALEX V. FOURNET, Assessor, *et als.* } On file. No. 1002.

Mr. Justice De Blanc recused himself. The case was called in its regular order, and was argued by G. A. Breaux, Esq., on the part of the relator and appellant, and submitted by him on the briefs.

June 13th, 1878. No. 1002. The State, *ex rel.* Thos. W. Nelson *vs.* Alex. V. Fournet, assessor, *et al.* The judgment appealed from is affirmed at costs of relator. Mr. Justice De Blanc is recused in this case.

July 9th, 1879. No. 1053. State of La. *ex rel.* Thos. W. Nelson *vs.* Police Jury, Parish of St. Martin.

The case was called in its regular order, and was submitted on the part of the appellant on the briefs on file. The court
116 took the case under advisement.

July 11th, 1879.

STATE OF LA. *ex rel.* THOS. W. NELSON
*vs.*
POLICE JURY, P'SH ST. MARTIN. } No. 1053.

On motion to dismiss, the appeal is therefore dismissed at the cost of the appellant.

July 9th, 1880. No. 1100. The State of La. *ex rel.* T. W. Nelson *vs.* Police Jury of the Parish of St. Martin.

Mr. Justice Fenner recused himself, having been of counsel. This case was called in its regular order, and was argued by Gustave A. Breaux, Esq., on the part of pl'ff, and by W. B. Merchant on the part of the defendant; and the court took the case under advisement on the briefs on file.

July 13th, 1880. State of La. *ex rel.* Thos. W. Nelson *vs.* Police Jury, P'sh of St. Martin *et als.*

It is therefore ordered, adjudged, and decreed that the judgment appealed from making the *mandamus* peremptory be re-
117 versed, and that this case be remanded for further proceedings, and that appellee pay costs in both courts. Mr. Justice Fenner recuses himself, having been of counsel, and Mr. Justice Levy takes no part, as interested on a similar question.

JULY 7th, 1881.

STATE OF LA. *ex rel.* T. W. NELSON
*vs.*
POLICE JURY, P'SH ST. MARTIN.

This case was called in its regular order, and was argued orally

by Gen. A. DeBlanc, C. H. Mouton, Esq., and E. Simon, Esq., on behalf of the parish, and by —— Breaux, Esq., on behalf of pl'ff and appellee, and the case was taken under advisement on the briefs on file, July 12th, 1881.

STATE OF LA. *ex rel.* THOS. W. NELSON
*vs.*
POLICE JURY, P'SH ST. MARTIN.

Messrs. Justices Levy and Fenner recuse themselves, the former having been of counsel in the case, the latter having been consulted as counsel in a similar case, and being individually interested in an analogous suit, to be determined in the same manner as the present one. The remaining three members of the court being unable to concur, their Honors, G. W. Hudspeth, dist. judge
118 of the dist. ct. for the 13th jud'l dist., and John Clegg, judge of the dist. ct. for the 25th jud'l dist., were called upon, under the provisions of art. 85 of the constitution, to sit in the place of the justices recused, and have done so.

Mr. Justice Todd dissents from the opinion and decree of the court thus composed of their Honors, E. Bermudez, ch'f justice, S. P. Peche, assoc't justice, and G. W. Hudspeth and John Clegg, dist. judges. It is therefore ordered and decreed that the judgment appealed from be reversed, and proceeding to render such judgment as should have been rendered. It is ordered, adjudged, and decreed that there be judgment for the defendant, rejecting the demand of relator, with costs in both courts.

Sup. Ct. of the State of La. at Opelousas.

THE STATE *ex rel.* T. W. NELSON, Pl'ff in Error,
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN *et al.*
Defendants in Error.
} No. 1124.

119 *Application for Writ of Error.*

THE STATE OF LOUISIANA *ex rel.* THOMAS W. NELSON
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN.
} No. 1124.

Supreme court of Louisiana, holding sessions at Opelousas.

And now comes Thos. W. Nelson, of Louisiana, by Gust. A. Breaux, his attorney, and complains that in the record and proceedings, and also in the rendition of a judgment in a suit between the State of Louisiana *ex rel.* Thos. W. Nelson, plaintiff, and the Police Jury of the Parish of St. Martin, defendant, in the supreme court of the State of La., holding sessions at Opelousas, being the highest court of law of the said State in which a decision could be had in said suit, and in which a final decree was rendered against him on the ——— day of July, 1881, in said suit, wherein it is claimed that the contract of plaintiff, this right to have the mandamus prayed for issued, is

protected by Art. 110 of the constitution of the State, and paragraph one, of section ten, Art. first of the Constitution of the
120 United States; and that the attempt to repeal by act of the Legislature of April 10, 1877, secs. 2628, 2629, 2630, 2647, 2648, and 2649, of the Revised Statutes of 1870; and part of Art. 625 of the Code of Practice, which alone give a remedy to judgment creditors against a parish for the enforcement of judgments, is in violation of the aforesaid articles of the Constitution of the United States.

That said suit was tried in the court of first instance, wherein judgment was rendered, granting the mandamus; that the Police Jury of the parish of St. Martin appealed therefrom to the supreme court of the State of Louisiana, and after hearing therein the said supreme court rendered a judgment and decree denying the said mandamus, and also the remedy provided by law, and protected by your petitioner by the Constitution of the United States, and that the said judgment became final on or about the 12th day of July, 1881.

Petitioner shows that in the premises he is entitled to a writ of error to the Supreme Court of the United States, and he
121 prays that the same may be granted according to law; that citations may be signed and a bond approved, and for general relief.

(Signed) GUS. A. BREAUX,
*Att'y for Petitioner.*

*Order of Court Granting Writ of Error.*

A writ of error is allowed herein as prayed for, returnable to the Supreme Court of the United States, on the second Monday of October, 1881, upon petitioner furnishing bond, with good and solvent security in the sum of two hundred and fifty dollars, conditioned as the law directs.

New Orleans, July 29th, 1881.

(Signed) E. BERMUDEZ,
*Chief Justice.*

122 Supreme Court of the State of La.

THE STATE OF LA. *ex rel.* THOS. W. NELSON
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN *et als.* } No. 1124.

Bond for writ of error filed Aug. 6th, 1881.

(Signed) BENJ. ROGERS, *Clerk.*

123 Know all men by these presents, that we, Thos. W. Nelson, as principal, and Gustave A. Breaux, of New Orleans, La., as sureties, are held and firmly bound unto the Police Jury of the Parish of St. Martin, Ugr. A. Guilbeau, sheriff and tax collector, in the full and just sum of two hundred and fifty dollars, to be

paid to the said [———] certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators jointly and severally by the presents.

Sealed with our seals, and dated this —— day of July, in the year of ou Lord one thousand eight hundred and eighty-one.

Whereas, lately at a sup. court of the State of La., holding sessions in and for the State of Louisiana at Opelousas, La., in a suit depending in said sup. court wherein the State of La., *ex rel.* Thos. W. Nelson, is plaintiff, and the Police Jury of the Parish of St. Martin *et als.*, judgment was rendered against Thos. W. Nelson, plaintiff, and the said Thos. W. Nelson having obtained a writ of error, and filed a copy thereof in the clerk's office of the said supreme court, at Opelousas, to reverse the judgment in the aforesaid suit, and a citation directed to the said Police Jury for the Parish of St. Martin and U. A. Guilbeau, sheriff and tax collector,
124 citing and admonishing them to be and appear at the Sup. Court of the United States, to be holden at Washington the second day of Oct. next.

Now the condition of the above obligation is such that if the said Thos. W. Nelson shall prosecute his writ to effect, and answer all damages and cost if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in the presence of—

THOS. W. NELSON. [L. S.]
Per BREAUX & HALL, *Atty.* [L. S.]
GUS. A. BREAUX. [L. S.]

Approved.
E. BERMUDEZ, *Chief Justice.*

UNITED STATES OF AMERICA, }
*State of Louisiana*, } *ss:*

Personally appeared Gustave A. Breaux, who being, duly sworn, deposes and says that he is the surety on the within bond; that he resides in the parish of Orleans, Louisiana, and is worth the full sum of two hundred and fifty dollars over and above all his
125 debts and liabilities and property exempt from execution.

(Signed) GUS. A. BREAUX.

Subscribed and sworn before me, this 29th day of July, '81.
(Signed) M. M. COHEN,
*Commissioner U. S. Circuit Ct., Dist. of La.*

No. 1124.

Supreme Court of the State of Louisiana, at Opelousas, La.

THE STATE OF LA. *ex rel.* THOS. W. NELSON
Plaintiff in Error,
*vs.*
THE POLICE JURY OF THE PARISH OF ST. MARTIN. } Writ of Error.

Copy of a writ of error lodged in the clerk's office of the supreme

court of the State of Louisiana, at Opelousas, La., in pursuance of the statutes in such cases made and provided, this — day of ——, one thousand eight hundred and eighty-one.

[——— ———,]
*Att'y of Pl'ff in Error.*

Filed Aug. 6th, 1881.
(Signed) BENJ. R. ROGERS, *Clerk.*

126 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America, to the honorable the judges of the supreme court of the State of La., greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the suit between The State of Louisiana *ex rel.* Thos. W. Nelson and the Police Jury of the Parish of St. Martin, in the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity, or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of sheir being repugnant to the Constitution, treaties or laws
127 of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or clim̃ed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened to the great damage of the said Thos. W. Nelson as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the
128 same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 29th day of July, in the year of Lord one thousand eight hundred and eighty-one.

(Signed) F. A. WOOLFLEY,
*Clerk of the Circuit Court of the U. S. for the East. Dist. of La.*

Allowed by—
[SEAL.] E. BERMUDEZ,
*Chief Justice S. C. La.*

129 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Louisiana before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between the State of Louisiana *ex rel.* Thomas W. Nelson and the Police Jury of the parish St. Martin, in the State of Louisiana, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or
130 of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Thomas W. Nelson, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the 29th day of July, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. A. WOOLFLEY,
*Clerk of the Circuit Court of the United States for the Eeastern District of Louisiana.*

Allowed by—
E. BERMUDEZ,
*Chief Justice S. C't La.*

131 [Endorsed:] No. 1124. Supreme court of the State of Louisiana, at Opelousas, La. The State of Louisiana *ex rel.* Thomas W. Nelson, plaintiff in error, *versus* The Police Jury of the Parish of St. Martin, La., *et als.*, defendants in error. Writ of error. Filed Aug. 6th, 1881. Benj. R. Rogers, clerk S. C. 3 D.

132 THE UNITED STATES OF AMERICA, SUPREME COURT OF THE STATE OF LOUISIANA.

The President of the United States to the Police Jury of the Parish of St. Martin, in the State of Louisiana, through the President thereof, and Ulger A. Guilbeau, Sheriff and Tax Collector of the Parish of St. Martin, in the State of Louisiana, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the city of Washington, on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Louisiana, at Opelousas, La., wherein the State of Louisiana *ex rel.* Thomas W. Nelson is plaintiff in error, and you are, and each of you are defendants in error, to show cause if any there be why the judgment rendered against the said Thomas W. Nelson as in writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Bermudez, chief justice of the supreme court of the State of Louisiana, this —— day of ————, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] E. BERMUDEZ.

*Chief Justice Supreme Court, State of Louisiana.*

133 [Endorsed:] Supreme Court of the State of Louisiana, at Opelousas, La. No. 1124. The State of Louisiana, *ex rel.* Thomas W. Nelson, plaintiff in error *vs* The Police Jury of the Parish of St. Martin *et als.*, defendants in error. Citation to the defendants in error. Marshal's return.

Received, and on the fifth day of September, 1881, served a copy of the within citation on the Police Jury of the Parish of St. Martin, thro' its president, Armand Dugny, in person; and on the same day served a copy of within citation on Ulger A. Guilbeau, sheriff and tax collector, also in person; said services being made at the court-house at the St. Martinsville, in the Parish of St. Martin, and made by the undersigned by reason of there being no deputy marshal or United States marshal resident in said parish.

GUS. A. BREAUX.

Gus. A. Breaux, sworn, says that the services of copies of the within citation were made as stated on the above return, and that all the facts therein stated are true.

GUS. A. BREAUX.

Sworn to and subscribed before me, this fifth day of September, 1881.

H. FOURNET, *Clerk.*

R'c'd and filed Sep. 16th, '81.

BENJ. R. ROGERS,
*Clerk Sup. C.*

134 UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Benj. R. Rogers, clerk of the supreme court of the State of Louisiana, holding sessions at the town of Opelousas, do hereby certify that the foregoing pages numbered 1 to 133, inclusive, contain a full, true, and complete copy of the transcript of the proceedings had in the 21st jud'c'l dist. court, in and for the parish of St. Martin, in a certain suit wherein T. W. Nelson was plaintiff, and the Police Jury of St. Martin was defendant, and also of all the proceedings had in this supreme court on the appeal taken by said T. W. Nelson, which appeal is now on the files thereof under Nos. 1002, 1053, 1100, 1124.

In testimony whereof, I have hereunto set my hand and affixed the seal of this honorable court, at the town of Opelousas, this 16th day of Sept., *anno Domini* one thousand eight hundred and eighty-one, and in the one hundred and sixth year of the Independence of the United States of America.

[SEAL.] BENJ. R. ROGERS,
*Clerk S. C. 3 D.*

135 UNITED STATES OF AMERICA, *State of Louisiana.*

Supreme Court of the State of Louisiana.

I, Felix P. Poche, senior associate justice presiding in the absence of the chief justice of the supreme court of the State of Louisiana, ho hereby certify that Benjamin R. Rogers is clerk of the supreme court of the State of Louisiana, holding sessions at the town of Opelousas; that the signature of Benj. R. Rogers to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof, I have hereunto set my hand and seal, at the city of New Orleans, this 30th day of Sept'r, in the year of our Lord one thousand eight hundred and eighty-one.

[SEAL.] F. P. POCHE,
*Senior Associate Justice presiding in the Absence of the Chief Justice of the Sup. Court of the State of Louisiana.*

[Endorsed on cover:] Louisiana sup. court. No. 370. The State of Louisiana *ex rel.* Thomas W. Nelson *vs.* Plaintiff in Error, The Police Jury of the parish of St. Martin, in the State of Louisiana. Filed October 10, 1881.

7—370

SUPREME COURT OF THE UNITED STATES.

*OCTOBER TERM OF 1883.*

No. 370.

STATE OF LOUISIANA EX REL. THOMAS W. NELSON,
PLAINTIFF IN ERROR,

*vs.*

POLICE JURY OF THE PARISH OF ST. MARTIN, IN THE STATE OF LOUISIANA.

In Error to the Supreme Court of the State of Louisiana.

GUS. A. BREAUX,
Attorney for Relator.

A. W. Hyatt, Print. 73 Camp St., N. O.—28,167

SUPREME COURT OF THE UNITED STATES.

*OCTOBER TERM OF 1883.*

No. 370.

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STATE OF LOUISIANA EX REL. THOMAS W. NELSON,
PLAINTIFF IN ERROR,

*versus*

POLICE JURY OF THE PARISH OF ST. MARTIN, IN THE STATE OF LOUISIANA.

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In Error to the Supreme Court of the State of Louisiana.

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## ASSIGNMENT OF ERRORS.

1. The Court erred in not deciding that the judgment in favor of Nelson against the Parish of St. Martin was a contract, including the remedies for its execution, existing at the time of its rendition, of which the plaintiff could not be deprived by subsequent legislation.

2. In not deciding that the Act of April 10, 1877, repealing the statutes, indicating the remedy for enforcing judgments against parishes, could have no effect on the judgment of 1873, in favor of Nelson.

3. In not deciding that the judgment created contract rights, protected by the Constitution of the United States, inhibiting the enactment of laws, the obligation of contracts.

4. In not deciding that the Constitution of 1879 could not limit the rate of taxation, so as to affect the contract rights of the judgment creditor, Nelson.

## PLEADINGS.

The relator, Nelson, in March, 1879, before a court of proper

jurisdiction, filed his petition, in which, among other averments, he alleged that he had obtained a judgment against the Parish of St. Martin, in the following words and figures, viz:

"In the above entitled case, the law and evidence being in "favor of plaintiff and against the defendant, it is ordered, ad- "judged and decreed that said plaintiff, Thos. W. Nelson, have "judgment against and recover from the defendant, Parish of St. "Martin, the sum of forty five hundred dollars, with eight per "cent. interest per annum, from October 5th, 1868, and that the "Board of Assessors, or officers whose duty it is to assess taxes, "forthwith proceed to assess a parish tax, at a sufficient rate "per cent. upon the assessment roll of the current year, to pay "said judgment, and that the tax collector proceed forthwith to "collect said tax in the same manner that parish taxes are now "collected, and the amount collected to be a specific fund to pay "said judgment.

"Done, read and signed in open Court, this 29th November, "1873."

2. That, notwithstanding repeated demands, the several officers, whose duty it was to assess and collect the tax ordered, refused to act, pretending therefor, the repeal (by Act No. 56, of the Extra Session of the Legislature of 1877), of enumerated sections of the Revised Statutes of 1877, and of Article 625 of he Code of Practice, the provisions whereof formed part of hist vested rights under the aforesaid judgment,

3. That these several sections, and Article 625 of the Code of Practice, were all in force prior to, at the time of, and for long years after, the final rendition of the judgment of November, 1873, aforesaid.

4. That the alleged repeal of said statutes, as to this judgment and relator's rights thereunder, leave him absolutely without remedy: and violate his rights of contract, as established by his aforesaid judgment: that the repealing Act of April 10th, 1877 is, therefore, null and void, as to him, because in direct conflict with Art. 110, of the Constitution of the State of Louisiana, and para-

graph one, of Section 10, Art. 1 of the Constitution of the United States, prohibiting the enactment of laws impairing the obligations of contracts.

5. And, finally, the necessity of the writ of mandamus invoked to secure him the rights secured to him by his judgment.

The prayer of the petition responds to the averments.

The Parish of St. Martin, through counsel, for answer, pleaded a variety of defenses, which might have been apposite in bar of the original action; that the remedies invoked were repealed by Act 56 of the laws of 1877. Rec. p. 5.

That the Parish of St. Martin is, at the present, largely involved in debts, and that the present parish tax of ten mills on the dollar, and the levying of an additional parish tax, to pay, in one installment, the whole of the Nelson judgment, would not only exceed the rate of taxation, as fixed by Article 209, of the Constitution of the State, but would absorb, or nearly absorb, the entire revenues of its inhabitants." Rec. pp. 5, 8, 9.

Upon these pleadings there was judgment making the mandamus peremptory, and ordering the levy of the tax, according to the prayer of the petition, to pay the judgment. Rec. pp. 13-14.

An appeal was granted to the Supreme Court of the State, who, upon hearing, reversed the judgment of the lower court denying the mandamus.

From this judgment, error to the Supreme Court of the United States is prosecuted.

The assignment of error, and the federal questions presented by the case, present the questions for solution by this Honorable Court.

## STATEMENT OF FACTS.

The facts necessary to a proper understanding of the points involved are few and undisputed; they are these:

Nelson obtained a moneyed judgment against the Parish of

St. Martin, which became final in November, 1873. Rec. p. 21. By that judgment, rendered in obedience to the statute of the State then in force, certain Parish officials were ordered to assess and levy a tax sufficient to pay it.

The resistance made, sufficiently evidences that these officers decline to perform the duty imposed upon them by the judgment; and the Treasurer states that there are no funds in the parish treasury with which to pay the judgment in favor of Nelson; further, that the parish is without property liable to seizure under execution. Rec. p. 12.

Upon these facts the case went to trial:

The sole issues presented in the case, by the pleadings, therefore, were:

1st Is the mandamus invoked by the relator the proper remedy, under the State Code, in the instant case?

2d. Could the State, by a repealing act, deprive the relator, Nelson, of his right to have a tax levied upon the property of the debtor parish, to pay his judgment against it?

3d. Could the State Constitution, by limiting taxation, deprive the judgment debtor of his right, previously acquired, of a tax sufficient to pay his judgment?

In a proceeding, the object of which can be, only to compel a functionary to discharge a duty no longer open to his discretion, it is inconceivable that any questions can arise, beyond the simple ones:

1st. Is the duty imposed imperative? Does he decline to perform it?

And in the instant case:

2d. Is the Act No. 56, of the Legislature of 1877, repealing the statutory remedy for enforcing the collection of judgments from the parishes of the State; and is Article 279 of the Constitution of 1879, limiting taxation, binding on the relator, Nelson?

3d. Is the remedy invoked the proper one?

The issues involved are thus stated by the Supreme Court, in its opinion, in 32 Annual, p. 886: "The present proceedings

" is instituted against the Police Jury of the Parish of St. Martin, " and has for its object to compel them by *mandamus* to assess, " collect, and apply a special tax for the payment of the relator's " judgment.

" The application is resisted on two grounds :

" First. The State and Parish Tax Collector was not made " a party.

" Second. The law under which the judgment was rendered " for the levy and application of the tax was repealed by Act " No. 56, of 1877."

The Court then state that the plaintiff claimed protection from the effect of such repeal, under the guarantees of the Constitution of the United States.

The first question was decided adversely to defendant; and as to the second issue, the opinion proceeds :

" Second. The Act of 1877 should be no bar to the exercise " of the remedy accorded by law to the plaintiff, and which was " in force at the time that he obtained his judgment, and which, " not only theoretically, but practically, formed part of that " judgment, *provided* that judgment be founded on a contract."

Thus, it is obvious, that the defendant conceded, and the Court necessarily admitted, that the proceeding by mandamus was, and is, the proper legal remedy in the case; that the proper parties were before the Court; and that the case should be remanded, " that the relator may have an oportunity of establish- " ing that his judgment is founded on a contract, if such be the " case."

Here the Supreme Court, by its judgment of 1880, remanding the cause, interjected, unwarrantedly, we think, a new question : one not presented by the pleadings, viz : whether or not the claim on which the original judgment is based, was a contract *vel non*.

What conceivable effect upon the only question stated by the appellate Court itself, as presented for adjudication, to-wit : whether the repealing act of 1877 could strip the relator of

rights protected by the Constitution of the United States, we could not then, nor do we now, see; but, of course, the relator was helpless to do aught but obey the mandate of the Court.

He went back to the lower Court, introduced the original contract, on which his judgment was based, in obedience to the order of Court, and objected to any evidence for any purpose other than to establish an original contract *vel non*, as ordered by the Court: printed record, p. 6; whereupon the lower Court again decided in obedience to the evidence and the suggestion of the appellate Court, that his judgment contract was protected by the Constitution of the United States.

Again, the relator returned to the Supreme Court, on the appeal of defendants. He was certainly surprised to be told that the Court did not mean what their language seemed to import so clearly; but that he was to show a *protected contract;* this he thought he had done originally, when he showed a judgment which the judgment debtor sought to avoid executing, by pleading in bar a statute of the State, depriving him of the entire remedy for its enforcement.

But the Court pursue: "The judgment rendered has become "definitive. It is *res judicata*, and can no longer be impugned, "as to issues involved and determined. Whatever issues it "settles, are irrevocably conclusive upon the parties to it; but "what is it, that was at issue; what is that it adjudicates; what "is that it is based upon?"

"The question presented for solution was: shall the plain-"tiff recover judgment for the amount claimed, and shall a tax "be levied to pay such judgment?"

Again:

"The judgment, therefore, was simply for a sum of money and for a tax to pay it. It would have necessarily been the same, had the suit been one for damages, founded on no contract at all." Rec. p. 35.

If now we turn to the opinion of the dissenting judge, there we ascertain that the substantial controversy before the Court,

involved the question stated by the majority opinion, viz: whether mandamus was the proper proceeding; whether, under the pleadings, the law of 1877, repealing the remedy for the collection of judgment against parishes, was or not in conflict with the Constitution of the United States, as impairing relator's judgment rights? Printed Rec., p. 38.

We have thus elaborately referred to these opinions to demonstrate that the sole questions for decision remained, at the last trial, precisely what the Court stated them to be before remanding the case.

It is obvious that the Court had originally fallen in the error of supposing that the contract which the relator sought to protect by his pleadings was that which formed the basis of his judgment, and which it compelled him to put in evidence, and which now it declares, very justly, we think, plays no part in the controversy.

The tenor of that decision is quite clear that if relator can show that the judgment he seeks to enforce was based upon a contract, then the Court will grant him his mandamus, as proper; and will order the tax levied and assessed to pay the judgment; and the repeal of the Act of 1877, is no bar to the enforcements of his rights as fixed by the judgment of 1873.

All this is reiterated substantially in the present opinion.

From all this it would seem sufficiently obvious that the Federal question presented by the pleadings alone remained for decision.

In the opinion of the appellate Court itself, the mandamus is decided to be the proper proceeding: that the judgment was originally based upon a contract; that the remedy under the statute forms part of the rights of the judgment creditor, even if not included in terms, as in the instant judgment; thus leaving for possible decision only the naked question, whether a judgment based upon a contract, can be stripped of all remedy for its enforcement, by a State statute subsequently passed, with-

out conflict with the provisions of the United States Constitution protecting contract obligations?

How the Court arrives at the extraordinary conclusion that it can avoid deciding the only question presented by the pleadings, and that can thus arise for decision, even on its own statement of the case, is thus set forth:

"By the lapse of time and the force of circumstances, it is "clear that this judgment, as regards the levy of the tax, has ceased to be executory, and has passed out of existence, inas- "much as the defendant cannot, under its terms, be required to do *nunc* in 1881, what it directed to be done *tunc* in 1873."

The Court, we think, must have totally forgotten what it uttered in 1880, in its opinion in the same case, when it said: "The validity of this judgment was assailed, and *an injunction* "*was obtained to arrest its execution*, but the Court dissolved that "injunction, and maintained the judgment. On appeal, the "judgment was affirmed. 28 An. 578."

See 32 Ann. 886.

Can a party be heard to complain, that a tax was not assessed and collected during a period of time, in which an injunction prevented this being done at his instance, because the language of the judgment is that this tax should be assessed and levied on the assessment roll of a designated year; and that time has therefore passed?

Can a court of justice be listened to make the assertion for such party, as a reason for declining to decide the sole question presented by, or possible under, the pleadings, that question being federal?

We submit, that the opinion evidences that an affirmative answer to these questions is the sole warrant to be found in the opinion for the omission of a formal decision of the federal question presented by the pleadings, decided by the District Court, and necessarily involved in any decision of the cause.

Now, the broad question presented, and always discussed, was not whether, after having been prevented by injunction,

issued at the instance of defendant, an injunction, the determination whereof dragged along in the Courts until 1876, the Parish of St. Martin could be compelled to levy and assess a tax in 1873, as ordered by the judgment? No such absurdity could be contemplated. The question presented in the mandamus proceedings ever has been whether the relator, in virtue of his judgment, was entitled to the substantial right of having a tax sufficient in amount levied, assessed and collected, to pay the judgment he held against the defendant parish? To that broad, substantial issue tendered by the relator, the defendant replies: "You are no longer entitled to a tax, as claimed, because the law, which formed a part of your judgment, formerly entitling you to it, has been repealed: the rejoinder being that the rights of the relator as fixed by the judgment at its rendition, including all substantial remedies for its enforcement, are protected against adverse State legislation, by the United States Constitution.

In a proceeding where such substantial inquiry alone is presented, how can a Court avoid the necessity of its decision?

Certainly not by stating that the defendant stripped the relator of his rights by arresting their enforcement by an injunction, and then telling him that it is too late to enforce them according to the precise letter of the judgment. Certainly not by the Courts compelling the relator to introduce evidence against his will, on an issue interjected by the Court itself, without suggestion either in the pleadings or argument; and then complacently telling him that "by his course in the lower Court, in ad-
"ducing evidence other than the record, in the case in which
"the judgment was rendered, the relator has admitted his legal
"inability to have that portion of the judgment for the tax *vi*
"*terminis*, executed, and its consequent *caducity*."

We insist upon it, that this was not a question in the case; if it became so, which we deny, it was because the Court compelled the relator to travel out of the record, in compelling him to put in evidence, upon an issue not presented. This he obeyed, confining himself, in so doing, to the precise terms of the

opinion, restricting his offer of evidence to the declared purpose of that opinion; that he cannot, thereby, be deprived of his right to have the federal question presented by the pleadings,—the only question at issue—decided by the Court, is too plain for argument.

Now, the question is, can the Court, having thus, in spite of relator, created a side issue, prevent him from having his federal question presented and passed upon by the Supreme Court of the United States, by ignoring the only possible issues under the pleadings, and staking its decree on an issue of the Court's own making; an issue which, at last, if it plays any part in the case, is involved in the overshadowing issue of the impairment of relator's rights.

We assert, without hesitation, and with due deference to the majority opinion of the Louisiana Court, that it is utterly impossible to decide the issues made up by the petition for a mandamus and the answer of the defendants, without deciding, substantially, the two questions hitherto stated, as involved in the case, viz:

1. Is the mandamus invoked by the relator the proper remedy under the Code, in the instant case?

2. Could the State, by a repealing act, deprive the relator, Nelson, of his right to have a tax levied upon the property of debtor parish to pay his judgment against it?

In support of this assertion we again appeal to the statement of the issues as made by the Court itself, in its opinions, in 30 Ann. 1103, 32 Ann. 884, and in the present opinion, where the Court say: "The case was before us at the last term. "We found the relator in presence of the defence, that the law "under which he sought relief had been repealed, and that the "proceeding was unwarranted. To this attack he replied that "the repeal was inoperative, as his judgment rested on a con-"tract, shielded by the Constitution of the United States, which "protects the obligations thereof from all impairment."

This is not entirely accurate, for our position was, and has

ever been, that the judgment itself, and all rights thereunder were a contract, which neither State nor constitutional legislation could impair, without violating the Constitution of the United States.

Thus the Court will perceive that upon these issues the mandamus must be made peremptory or denied : the federal question is necessarily involved, and cannot be avoided, in a decision of the only issues presented by the pleadings, as stated by the Court itself.

The right to a mandamus as the proper proceeding, is not questioned ; it is conceded ; Articles 829, 834 of the Code of Practice, at any rate, settle the question beyond doubt ; there remains, then, solely, under the pleadings and the law, for decision, the question whether the repealing act of 1877, and the constitutional provision of 1879, limiting taxation to ten mills, can impair the relator's rights under the judgment ?

Inasmuch as the opinion of the Supreme Court ignores the federal question, though presented in the record, it becomes necessary to inquire under what rule this Court will take jurisdiction of federal questions either not presented by the record, or not formally decided by the State Court.

" The rule in relation to the jurisdiction of the United States " Supreme Court, over State Court decisions, is, that it must " appear from the record, in express terms, that there has been " a decision against the right claimed under the Constitution ; " * * * *or, that the judgment or decree complained of could not " have been rendered without so deciding.*"

Dugger vs. Bocock, 104 U. S. Reports, 603.

And in Murray vs. Charleston, 96 U. S. Rep. p. 441, the Court say : " The jurisdiction of this Court, over the judgments " of the highest courts of the States, is not to be avoided by the " mere absence of express reference to some provision of the Fed- " eral Constitution. Whenever rights acknowledged and pro- " tected by that instrument, are denied or invaded, under the " shield of State legislation, this Court is authorized to interfere.

" * * * Everywhere in our decisions it has been held that " we may review the judgment of a State Court, when the de- " termination or judgment of that Court could not have been " given without deciding upon a right or authority claimed to " exist under the Constitution and laws, or treaties of the United " States; and deciding against that right."

This case offers, in principle, a close parallel to that now being considered on the question of jurisdiction.

The City of Charleston owed an indebtedness represented by interest-bearing certificates; for governmental revenues, the city imposed a tax which, under ordinances of 1870 and 1871, was to be assessed on the city indebtedness; and the amount of said tax to be retained out of the interest, payable quarterly, due the holder thereof. The plaintiff holder of stock certificates sued for his interest.

There was judgment for defendant: the highest Court of the State affirmed the judgment; and error was sued out to the Federal Court: objection was made to their jurisdiction, that no federal question was raised of record or decided in the Court of Common Pleas.

It has been shown how the plea was met: the fair deduction of the decision is, that this Court will look into the substance of cases; will look into the real issues involved, without much regard to the form in which they are presented; and into the opinions rendered to ascertain whether the decree could have been so rendered, without involving and passing upon a federal question; and if it be ascertained that the decision could not have been rendered without deciding a right claimed under the Constitution of the United States, then, irrespective of the reasons given for the decree rendered, the federal jurisdiction attaches, and a review becomes the duty of the Court.

The Act of 1867, as affecting the jurisdiction of the Supreme Court, under the Judiciary Act, was the subject of an exhaust-

ive examination in the case of Murdock vs. City of Memphis, 20 Wallace, p. 634.

We take a statement of this class of cases—which govern the case at bar—from the opinion and the conclusion of the Court, viz :

" Or it may be, that there are other issues in the case, but " they are not of such controlling influence on the whole case " that they are alone sufficient to support the judgment."

" It may also be found that, notwithstanding, there are many " other questions in the record in the case, the issue raised by " the federal question is such that its decision must dispose of " the whole case."

Now, the conclusion is: " But if it be found that the issue " raised by the question of Federal law is of such controlling " character that its correct decision is necessary to any final judg- " ment in the case, or that there has been no decision of the " State Court of any other matter or issue which is sufficient to " maintain the judgment of the Court without regard to the fed- " eral question, then this Court will reverse the judgment of the " State Court, and will either render such judgment here as should " have been rendered, or remand the case to that Court, as the " circumstances of the case may require."

In the instant case, it has been shown that the question as to the relator's right to a proceeding by mandamus, was decided in his favor: that the question of federal law, tendered by the relator, accepted and renewed by the defendant, as the only question involved, was discussed and decided by the lower Court; discussed, as the serious and only question in the case by the Supreme Court in its opinion : and finally, that in the present proceeding, it is a question necessarily involved in the decision of the case,—it is necessarily the controlling question, even if the unwarrantably interjected minor question under the dictates of the Court is considered : it overshadows all other issues in the case.

Concede, therefore, for argument's sake, that there was a ques-

tion in the case whether relator was entitled to a tax on the assessment roll of 1873, and applying, then, the principles governing the test of the jurisdiction of this Court, over the decisions of State tribunals, we say, as was said in Murray vs. Charleston, that the substantial, controlling question in this case, without deciding which in effect, no decision could be had, is the question of federal law: the question whether or not the contract rights of relator under the judgment of November, 1873, in his favor, are impaired by the Act of the State Legislature of 1877, and the enactment of Art. 209 of the Constitution of 1879?

The difference between the Charleston and the instant case, is that in the former the federal question was not formally presented for decision; whereas here it is so formally presented; in the former, the decision was claimed to have been rendered without reference to that question; and here the decision, though a denial in fact of relator's protected rights under the Federal Constitution is ostensibly based upon an issue not in the record, and of no real significance, if it were, as to the substantial rights involved in the proceeding.

It is submitted, with respect, that the question, whether the rights of relator under the final judgment rendered in his favor, in November, 1873, are protected against the adverse State legislation of 1877, is necessarily involved in the decision of the case, by the Supreme Court of the State: and that no decision can be rendered without involving and passing upon these rights, under the pleadings in the case.

But the Act of 1877 strips the judgment creditor of all remedy against debtor parishes.

The means of enforcing judgments against these were provided, in sections of the Revised Statutes, and Article 625 of the Code of Practice, all of which will be found recited in the Appendix; the repealing act simply strikes at their existence, leaving no other remedy. This is the claim of defendant; and if the repealing act is constitutional as to this cause, his claim is substantiated.

There is, here, no question of a mere change of remedy, which, if left equally efficient, would leave the rights of relator unaffected. It will hardly be claimed that the judgment creditor who is left at the "tender mercy" of a political body, whose only means of payment is taxation, which has resisted payment of its judicial debt for over ten years, is left with a remedy; so that the bald claim of the Parish of St. Martin, to be relieved on the faith of the legislation of 1877, which is alleged to be violative of relator's constitutional rights, from the obligation to assess, and collect, a tax sufficient to pay the judgment according to the terms thereof and the laws existing at the time of its rendition, is the question presented on the pleadings in this cause for decision.

That the withdrawal of all remedies impairs the obligations of contracts, is stated by Mr. Cooley on Constitutional Limitations, p. 286, on the authority of Bronson vs. Kenzie et als., 1 Howard, 316, among others.

A law which deprives a party of all legal remedy must necessarily be void. Cooley, p. 289. So, where a statute does not leave a party a substantial remedy according to the course of justice, as it existed at the time the contract was made, but shows upon its face an intention to clog, hamper or embarrass the proceedings to enforce the remedy, so as to destroy it entirely, and to impair the contract so far as it is in the power of the Legislature to do it, such statute cannot be regarded as a regulation of the remedy, and is void.

Cooley, Const. Lim., p. 289.

In Green vs. Briddle, 8 Wheaton, 1, the obligations of a contract, the Court say, include everything in its obligatory scope. Among these elements nothing is more important than the means of enforcement.

See, also, Edwards vs. Kearsey, 96 U. S. 598.

The judicial action of Courts in this State is in accord with the principle stated. See State ex rel. Strauss vs. Brown, 30 Ann. 82.

State ex rel. Henry vs. The Mayor, 29 Ann. 835.

State ex rel. Moore vs. City of N. O., 32 Ann. 726.

It seems established, then, that the right to the remedy existing under the law for the execution at the date of its rendition, is part of the contract right of the creditor, which is protected by the Constitution of the United States against subsequent State legislation, enacted for the impairment of such rights.

It needs no further argument to show that when such legislation as that of 1877, is for the express purpose of destroying those rights; or that where a constitutional provision, such as Article 209 of the State Constitution of 1879 has for effect in its construction, the destruction of judgment rights previously obtained, both must be held void, as being in conflict with the provisions of the Constitution of the United States, prohibiting the passage by States of laws impairing the obligations of contracts.

It follows that the judgment of the State tribunal, denying the mandamus asked by the relator, in effect, sustains the Act of 1877, which destroys his judgment remedy for enforcement of same; and the 209th Article of the Constitution of 1879, restricting taxation to his injury, in violation of his judgment rights, protected, as they are, by the Constitution of the United States.

We respectfully ask that the said judgment be reversed, and that this Court order that the mandamus be made peremptory.

GUS. A. BREAUX,

Attorney for Relator.

MARCH, 1884.

# APPENDIX.

## CODE OF PRACTICE OF LOUISIANA.

### (WRIT OF MANDAMUS.)

ARTICLE 829. This is an order issued in the name of the State, by a tribunal of competent jurisdiction, and addressed to an individual or corporation, or court of inferior jurisdiction, directing it to perform some certain act belonging to the place, duty, or quality with which it is clothed.

ART. 834. It may be directed to public officers to compel them to fulfill any of the duties attached to their office, or which may be legally required of them.

## PROVISIONS FOR EXECUTION OF JUDGMENTS AGAINST PARISHES.

### CODE OF PRACTICE OF LOUISIANA.

ARTICLE 625. A party wishing for the sanction of a judgment which has been rendered in his favor, may apply for this purpose to the clerk of the Court having cognizance of the case in the first instance, who shall deliver to him an order of execution, according to the particulars of the judgment which has been pronounced, as is declared hereafter; *provided*, that whenever a judgment for money is rendered by any court of competent jurisdiction, against a parish of this State, the judge who shall render the judgment shall, in the same decree, order the assessor forthwith to assess a parish tax, at a sufficient rate per centum, upon the assessment roll of the current year, to pay and satisfy said judgment, with interest and cost; and whenever any judgment for money has heretofore been rendered by any court of competent jurisdiction, against a parish, the judgment shall, on motion, order forthwith the assessor to assess the tax, as above provided; and in every such decree of judgment, the judge shall provide that immediately upon the assessment of the tax by the assessor of the parish, the parish tax collector shall proceed forthwith to collect said tax, in the same manner that parish taxes are now collected, and the proceeds shall constitute a special fund, out of which said judgment, interest and cost shall be paid, and shall not be diverted to any other purposes; provided, sufficient proof be furnished to the judge, that there are no funds in the parish treasury to satisfy said judgment.

### REVISED STATUTES OF LOUISIANA.

SECTION 2628. Hereafter, whenever a judgment for money is rendered, by any court of competent jurisdiction, against a parish of this State, the judge who shall render the judgment shall, in the same

decree, order the board of assessors, or parish officers, whose duty it is to assess taxes, forthwith to assess a parish tax, at a sufficient rate per cent., upon the assessment roll of the current year, to pay and satisfy said judgment, with interest and costs.

SEC. 2629. Whenever any judgment for money has heretofore been rendered, by any court of competent jurisdiction, against a parish, the judge shall, on motion, order forthwith the board of assessors, or parish officers whose duty it is to assess taxes, to assess the tax as provided in the two thousand six hundred and twenty-eighth section of this act.

SEC. 2630. In such decree, or judgment, the judge shall provide that immediately upon the assessment of the tax by the assessors of the parish, the State collector, or tax collector, shall proceed forthwith to collect said tax, in the same manner that parish taxes are now collected, and the proceeds shall constitute a special fund, out of which said judgment, interest and costs shall be paid, and shall not be diverted to any other purpose, provided sufficient proof be furnished to the judge that there are no funds in the parish treasury to satisfy said judgment.

SEC. 2747. Hereafter, whenever a judgment for money is rendered by any court of competent jurisdiction against a parish of this State, the judge who shall render the judgment, shall in the same decree order the board of assessors or parish officers, whose duty it is to assess taxes, forthwith to assess a parish tax at a sufficient rate per cent. upon the assessment roll of the current year, to pay and satisfy said judgment, with interest and costs.

SEC. 2748. Whenever any judgment for money has heretofore been rendered by any court of competent jurisdiction against a parish, the judge shall, on motion, order forthwith the board of assessors or parish officers whose duty it is to assess taxes, to assess the tax as provided in the two thousand seven hundred and forty-seventh section of this act.

SEC. 2749. In such decree of judgment, the judge shall provide that immediately upon the assessment of the tax by the assessors of the parish, the State collector or tax collector, shall proceed forthwith to collect said tax in the same manner that the parish taxes are now collected, and the proceeds shall constitute a special fund, out of which said judgment, interest and costs shall be paid, and it shall not be diverted to any other purpose, provided sufficient proof be furnished to the judge that there are no funds in the parish treasury to satisfy said judgment.

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## REPEALING ACT.

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### EXTRA SESSION OF THE LEGISLATURE OF THE STATE OF LOUISIANA—1877.

No. 56.] AN ACT

To repeal Sections two thousand six hundred and twenty-eight, two thousand six hundred and twenty-nine, two thousand six hundred and thirty, two thousand seven hundred and forty-seven, two thousand seven hundred and forty-eight, two thousand seven hundred and forty-nine, of the Revised Statutes of eighteen hundred and seventy, and a portion of Article six hundred and twenty-five of the Code of Practice.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana, in General Assembly convened,* That Sections two thousand six hundred and twenty-eight, two thousand six hundred and twenty-nine, two thousand six hundred and thirty,

two thousand seven hundred and forty-seven, two thousand seven hundred and forty-eight, two thousand seven hundred and forty-nine of the Revised Statutes of eighteen hundred and seventy, and all that portion of Article six hundred and twenty-five of the Code of Practice, commencing at the following word: "provided," in the sixth line of said section, be and the same is hereby repealed.

[Signed] LOUIS BUSH,
Speaker of the House of Representatives.

[Signed] LOUIS A. WILTZ,
Lieutenant-Governor and President of the Senate.

Approved April 10th, 1877.

[Signed] FRANCIS T. NICHOLS,
Governor of the State of Louisiana.

A true copy:
WILL A. STRONG,
Secretary of State.